

# CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL, 1988

## PREAMBLE

We the representatives of the Brazilian People, convened in the National Constituent Assembly to institute a democratic state for the purpose of ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes, promulgate, under the protection of God, this CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL.

## TITLE I. FUNDAMENTAL PRINCIPLES

**Article 1.** The Federative Republic of Brazil, formed by the indissoluble union of the states and municipalities and of the Federal District, is a legal democratic state and is founded on:

- I. sovereignty;
- II. citizenship;
- III. the dignity of the human person;
- IV. the social values of labour and of the free enterprise;
- V. political pluralism.

Sole paragraph - All power emanates from the people, who exercise it by means of elected representatives or directly, as provided by this Constitution.

**Article 2.** The Legislative, the Executive and the Judicial, independent and harmonious among themselves, are the powers of the Union.

**Article 3.** The fundamental objectives of the Federative Republic of Brazil are:

- I. to build a free, just and solidary society;
- II. to guarantee national development;
- III. to eradicate poverty and substandard living conditions and to reduce social and regional inequalities;
- IV. to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination.

**Article 4.** The international relations of the Federative Republic of Brazil are governed by the following principles:

- I. national independence;
- II. prevalence of human rights;
- III. self-determination of the peoples;
- IV. non-intervention;
- V. equality among the states;
- VI. defense of peace;

- VII. peaceful settlement of conflicts;
- VIII. repudiation of terrorism and racism;
- IX. cooperation among peoples for the progress of mankind;
- X. granting of political asylum.

Sole paragraph - The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the peoples of Latin America, viewing the formation of a Latin-American community of nations.

## **TITLE II - FUNDAMENTAL RIGHTS AND GUARANTEES**

### **CHAPTER I - INDIVIDUAL AND COLLECTIVE RIGHTS AND DUTIES**

**Article 5.** All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

- I. men and women have equal rights and duties under the terms of this Constitution;
- II. no one shall be obliged to do or refrain from doing something except by virtue of law;
- III. no one shall be submitted to torture or to inhuman or degrading treatment;
- IV. the expression of thought is free, and anonymity is forbidden;
- V. the right of reply is ensured, in proportion to the offense, as well as compensation for property or moral damages or for damages to the image;
- VI. freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;
- VII. under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;
- VIII. no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law;
- IX. the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license;
- X. the privacy, private life, honour and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured;
- XI. the home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the event of *flagrante delicto* or disaster, or to give help, or, during the day, by court order;
- XII. the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by law for the purposes of criminal investigation or criminal procedural finding of facts;
- XIII. the practice of any work, trade or profession is free, observing the professional qualifications which the law shall establish;
- XIV. access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity;
- XV. locomotion within the national territory is free in time of peace, and any person may, under the terms of the law, enter it, remain therein or leave it with his assets;

- XVI. all persons may hold peaceful meetings, without weapons, in places open to the public, regardless of authorization provided that they do not frustrate another meeting previously called for the same place, subject only to prior notice to the competent authority;
- XVII. freedom of association for lawful purposes is fully guaranteed, any paramilitary association being forbidden;
- XVIII. the creation of associations and, under the terms of the law, that of cooperatives is not subject to authorization, and State interference in their operation is forbidden;
- XIX. associations may only be compulsorily dissolved or have their activities suspended by a judicial decision, and a final and unappealable decision is required in the first case;
- XX. no one shall be compelled to become associated or to remain associated;
- XXI. when expressly authorized, associations shall have the legitimacy to represent their members either judicially or extrajudicially:
- XXII. the right of property is guaranteed;
- XXIII. property shall observe its social function;
- XXIV. the law shall establish the procedure for expropriation for public necessity or use, or for social interest, with fair and previous pecuniary compensation, except for the cases provided in this Constitution;
- XXV. in case of imminent public danger, the competent authority may make use of private property, provided that, in case of damage, subsequent compensation is ensured to the owner;
- XXVI. the small rural property, as defined by law, provided that it is exploited by the family, shall not be subject to attachment for the payment of debts incurred by reason of its productive activities, and the law shall establish the means to finance its development;
- XXVII. the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish;
- XXVIII. under the terms of the law, the following are ensured:
  - a. protection of individual participation in collective works and of reproduction of the human image and voice, sports activities included;
  - b. the right to authors, interpreters and respective unions and associations to monitor the economic exploitation of the works which they create or in which they participate;
- XXIX. the law shall ensure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, property of trademarks, names of companies and other distinctive signs, viewing the social interest and the technological and economic development of the country;
- XXX. the right to inheritance is guaranteed;
- XXXI. succession to the estate of foreigners which is located in Brazil shall be regulated by the Brazilian law in favour of the Brazilian spouse or children, whenever the personal law of the deceased is not more favourable to them;
- XXXII. the State shall provide, as set forth by law, for the defense of consumers;
- XXXIII. all persons have the right to receive, from the public agencies, information of private interest to such persons, or of collective or general interest, which shall be provided within the period established by law, subject to liability, except for the information whose secrecy is essential to the security of society and of the State:
- XXXIV. the following are ensured to everyone without any payment of fees
  - a. the right to petition the Government in defense of rights or against illegal acts or abuse of power;

- b. the obtaining of certificates from government offices, for the defense of rights and clarification of situations of personal interest;
- XXXV. the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power;
- XXXVI. the law shall not injure the vested right, the perfect juridical act and the *res judicata*:
- XXXVII. there shall be no exceptional tribunal or court:
- XXXVIII. the institution of the jury is recognized, according to the organization which the law shall establish, and the following are ensured:
  - a. full defense;
  - b. secrecy of voting;
  - c. sovereignty of verdicts;
  - d. power to judge willfill crimes against life;
- XXXIX. there is no crime without a previous law to define it, nor a punishment without a previous legal commination;
- XL. penal law shall not be retroactive, except to benefit the defendant;
- XLI. the law shall punish any discrimination which may attempt against fundamental rights and liberties;
- XLII. the practice of racism is a non-bailable crime, with no limitation, subject to the penalty of confinement, under the terms of the law;
- XLIII. the practice of torture, the illicit traffic of narcotics and related drugs, as well as terrorism, and crimes defined as heinous crimes shall be considered by law as non-bailable and not subject to grace or amnesty, and their principals, agents and those who omit themselves while being able to avoid such crimes shall be held liable;
- XLIV. the action of armed groups, either civil or military, against the constitutional order and the democratic state is a non-bailable crime, with no limitation;
- XLV. no punishment shall go beyond the person of the convict, and the obligation to compensate for the damage, as well as the decreeing of loss of assets may, under the terms of the law, be extended to the successors and executed against them, up to the limit of the value of the assets transferred;
- XLVI. the law shall regulate the individualization of punishment and shall adopt the following, among others:
  - a. deprivation or restriction of freedom;
  - b. loss of assets;
  - c. fine;
  - d. alternative rendering of social service;
  - e. suspension or deprivation of rights;
- XLVII. there shall be no punishment:
  - a. of death, save in case of declared war under the terms of article 84, MX;
  - b. of life imprisonment;
  - c. of hard labour;
  - d. of banishment;
  - e. which is cruel;
- XLVIII. the sentence shall be served in separate establishments, according to the nature of the offense, the age and the sex of the convict;
- XLIX. prisoners are ensured of respect to their physical and moral integrity;
- L. female prisoners shall be ensured of adequate conditions to stay with their children during the nursing period;
- LI. no Brazilian shall be extradited, except the naturalized ones in the case of a common crime committed before naturalization, or in the case there is sufficient

- evidence of participation in the illicit traffic of narcotics and related drugs, under the terms of the law;
- LII. extradition of a foreigner on the basis of political or ideological crime shall not be granted;
- LIII. no one shall undergo legal proceeding or sentencing save by the competent authority;
- LIV. no one shall be deprived of freedom or of his assets without the due process of law;
- LV. litigants, in judicial or administrative processes, as well as defendants in general are ensured of the adversary system and of full defense. with the means and resources inherent to it;
- LVI. evidence obtained through illicit means are unacceptable in the process;
- LVII. no one shall be considered guilty before the issuing of a final and unappealable penal sentence;
- LVIII. no one who has undergone civil identification shall be submitted to criminal identification, save in the cases provided by law;
- LIX. private prosecution in the cases of crimes subject to public prosecution shall be admitted, whenever the latter is not filed within the period established by law;
- LX. the law may only restrict the publicity of procedural acts when the defense of privacy or the social interest require it;
- LXI. no one shall be arrested unless in flagrante delicto or by a written and justified order of a competent judicial authority, save in the cases of military transgression or specific military crime, as defined in law;
- LXII. the arrest of any person as well as the place where he is being held shall be immediately informed to the competent judge and to the family of the person arrested or to the person indicated by him;
- LXIII. the arrested person shall be informed of his rights, among which the right to remain silent, and he shall be ensured of assistance by his family and a lawyer;
- LXIV. the arrested person is entitled to identification of those responsible for his arrest or for his police questioning;
- LXV. illegal arrest shall be immediately remitted by the judicial authority;
- LXVI. no one shall be taken to prison or held therein, when the law admits release on own recognizance, subject or not to bail;
- LXVII. there shall be no civil imprisonment for indebtedness except in the case of a person responsible for voluntary and inexcusable default of alimony obligation and in the case of an unfaithful trustee;
- LXVIII. *habeas corpus* shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of locomotion, on account of illegal actions or abuse of power;
- LXIX. a writ of mandamus shall be issued to protect a clear and perfect right, not covered by *habeas corpus* or *habeas data*, whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity exercising duties of the Government;
- LXX. a collective writ of mandamus may be filed by:
- a. a political party represented in the National Congress;
  - b. a union, a professional association or an association legally constituted and in operation for at least one year, to defend the interests of its members or associates;
- LXXI. a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship;

- LXXII. habeas data shall be granted:
- a. to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character;
  - b. for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative;
- LXXIII. any citizen is a legitimate party to file a people's legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to the administrative morality, to the environment and to the historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burden of defeat;
- LXXIV. the State shall provide full and free-of-charge legal assistance to all who prove insufficiency of funds;
- LXXV. the State shall compensate a convict for judicial error, as well as a person who remains imprisoned for a period longer than the one established by the sentence;
- LXXVI. for all who are acknowledgedly poor, the following is free of charge, under the terms of the law:
- a. civil birth certificate;
  - b. death certificate;
- LXXVII. *habeas corpus* and *habeas data* proceedings and, under the terms of the law, the acts necessary to the exercise of citizenship are free of charge;

Paragraph 1. The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federative Republic of Brazil is a party.

## CHAPTER II - SOCIAL RIGHTS

**Article 6.** Education, health, work, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution.

**Article 7.** The following are rights of urban and rural workers, among others that aim to improve their social conditions:

- I. employment protected against arbitrary dismissal or against dismissal without just cause, in accordance with a supplementary law which shall establish severance-pay, among other rights;
- II. unemployment insurance, in the event of involuntary unemployment;
- III. severance-pay fund;
- IV. nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to use it as an index for any purpose;
- V. a salary floor in proportion to the extent and complexity of the work;
- VI. irreducibility of the wages, except when established in collective agreement or covenant;
- VII. guarantee of wages never below the minimum one, for those receiving variable pay;

- VIII. year-end one-salary bonus based on the full pay or on the amount of the pension;
- IX. payrate for night-shift work higher than that for daytime work;
- X. wage protection, as provided by law, with felonious withholding c. wages being a crime;
- XI. participation in the profits or results, independent of wages, and, exceptionally, participation in the management of the company, defined by law;
- XII. family allowance for their dependents;
- XIII. normal working hours not exceeding eight hours per day a forty-four hours per week, with the option of compensating working hours a reducing the length of the workday through an agreement or a collection bargaining covenant;
- XIV. a workday of six hours for work carried out in continuous s} unless otherwise established by collective bargaining;
- XV. paid weekly leave, preferably on Sundays;
- XVI. rate of pay for overtime at least fifty per cent higher than that of normal work;
- XVII. annual vacation with remuneration at least one third higher than the normal salary;
- XVIII. maternity leave without loss of job and of salary, for a period of one hundred and twenty days;
- XIX. paternity leave, under the terms established by law;
- XX. protection of the labour market for women through specific incentives, as provided by law;
- XXI. advance notice of dismissal in proportion to the length of service of at least thirty days, as provided by law;
- XXII. reduction of employment related risks by means of health, hygiene and safety rules;
- XXIII. additional remuneration for strenuous, unhealthy or dangerous work, as established by law;
- XXIV. retirement pension;
- XXV. free assistance for children and dependents from birth to six years of age, in day-care centres and pre-school facilities;
- XXVI. recognition of collective bargaining agreements and covenants;
- XXVII. protection on account of automation, as established by law;
- XXVIII. occupational accident insurance, to be paid for by the employer, without excluding the employer's liability for indemnity in the event of malice or fault;
- XXIX. legal action with respect to credits arising from employment relationships with a limitation of:
  - a. five years for urban workers, up to the limit of two years after the end of the employment contract;
  - b. up to two years after the end of the contract for rural workers;
- XXX. prohibition of any difference in wages, in the performance of duties and in hiring criteria by reason of sex, age, colour or marital status;
- XXXI. prohibition of any discrimination with respect to wages and hiring criteria of handicapped workers;
- XXXII. prohibition of any distinction between manual, technical and intellectual work or among the respective professionals;
- XXXIII. prohibition of night, dangerous or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice;
- XXXIV. equal rights for workers with a permanent employment bond and for sporadic workers.

Sole paragraph - The category of domestic servants is ensured of the rights set forth in items IV, VI, VIII, XV, XVII, XVIII, XIX, XXI and XXIV, as well as of integration in the social security system.

**Article 8.** Professional or union association is free, with regard for the following:

- I. the law may not require authorization of the State for a union to be founded, except for authorization for registration with the competent agency. it being forbidden to the Government the interference and the intervention in the union;
- II. it is forbidden to create more than one union, at any level representing a professional or economic category, in the same territorial base, which shall be defined by the workers or employers concerned, which base may not cover less than the area of one municipality;
- III. it falls to the union to defend the collective or individual rights and interests of the category, including legal or administrative disputes;
- IV. the general assembly shall establish the contribution which, in the case of a professional category, shall be discounted from the payroll, to support the confederative system of the respective union representation, regardless of the contribution set forth by law;
- V. no one shall be required to join or to remain a member of a union;
- VI. the collective labor bargainings must be held with the participation of unions;
- VII. retired members shall be entitled to vote and be voted on in unions;
- VIII. the dismissal of a unionised employee is forbidden from the moment of the registration of his candidacy to a position of union direction or representation and, if elected, even if as a substitute, up to one year after the end of his term in office, unless he commits a serious fault as established by law

Sole paragraph - The provisions of this article apply to the organization of rural unions and those of fishing communities, with due regard for the conditions established by law.

**Article 9.** The right to strike is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defended thereby.

Paragraph 1. The law shall define the essential services or activities shall provide with respect to the satisfaction of the community's undelayable needs.

Paragraph 2. The abuses committed shall subject those responsible to penalties of the law.

**Article 10.** The participation of workers and employers is ensured in collegiate bodies of government agencies in which their professional or so security interests are subject of discussion and resolution.

**Article 11.** It is ensured, in companies with more than 200 employees, I election of a representative of the employees for the exclusive purpose furthering direct negotiations with the employers.

### **CHAPTER III - NATIONALITY**

**Article 12.** The following are Brazilians:

- I. by birth:
  - a. those born in the Federative Republic of Brazil, even if of foreign parents, provided that they are not at the service of their country;
  - b. those born abroad, of a Brazilian father or a Brazilian mother, provided that either of them is at the service of the Federative Republic of Brazil;
  - c. those born abroad, of a Brazilian father or a Brazilian mother, provided that they come to reside in the Federative Republic of Brazil and opt for the Brazilian nationality at any time;
- II. naturalized:
  - a. those who, as set forth by law, acquire Brazilian nationality, it being the only requirement for persons originating from Portuguese-speaking countries the residence for one uninterrupted year and good moral repute;
  - b. foreigners of any nationality, resident in the Federative Republic of Brazil for over fifteen uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality.

Paragraph 1. The rights inherent to Brazilians shall be attributed to Portuguese citizens with permanent residence in Brazil, if there is reciprocity in favour of Brazilians, except in the cases stated in this Constitution.

Paragraph 2. The law may not establish any distinction between born and naturalized Brazilians, except in the cases stated in this Constitution.

Paragraph 3. The following offices are exclusive for born Brazilians:

- I. those of President and Vice-President of the Republic;
- II. that of President of the Chamber of Deputies;
- III. that of President of the Federal Senate;
- IV. that of Justice of the Supreme Federal Court;
- V. those of the diplomatic career;
- VI. that of officer of the Armed Forces.

Paragraph 4. Loss of nationality shall be declared for a Brazilian who:

- I. has his naturalization cancelled by court decision on account of an activity harmful to the national interests;
- II. acquires another nationality, save in the cases:
  - a. of recognition of the original nationality by the foreign law;
  - b. of imposition of naturalization, under the foreign rules, to the Brazilian resident in a foreign State, as a condition for permanence in its territory, or for the exercise of civil rights.

**Article 13.** Portuguese is the official language of the Federative Republic of Brazil

Paragraph 1. The national flag, anthem, coat of arms and seal are the symbols of the Federative Republic of Brazil.

Paragraph 2. The states, the Federal District and the municipalities may have symbols of their own.

## CHAPTER IV - POLITICAL RIGHTS

**\*Article 14.** The sovereignty of the people shall be exercised by universal suffrage and by the direct and secret voting, with equal value for all, and, according to the law, by means of:

- I. plebiscite;
- II. referendum;
- III. people's initiative.

Paragraph 1. Electoral enrollment and voting are:

- I. mandatory for persons over eighteen years of age;
- II. optional for:
  - a. the illiterate;
  - b. those over seventy years of age;
  - c. those over sixteen and under eighteen years of age.

Paragraph 2. Foreigners cannot register as voters and neither can conscripts during their period of compulsory military service.

Paragraph 3. The conditions for eligibility, according to the law, are:

- IV. the Brazilian nationality;
- V. the full exercise of the political rights;
- VI. the electoral enrollment;
- VII. the electoral domicile in the electoral district;
- VIII. the membership in a political party;
- IX. the minimum age of:
  - a. thirty-five years for President and Vice-President of the Republic and Senator;
  - b. thirty years for Governor and Vice-Governor of a state and of the Federal District;
  - c. twenty-one years for Federal Deputy, State or District Deputy, Mayor, Vice-Mayor and justice of the peace;
  - d. eighteen years for City Councilman.

Paragraph 4. The illiterate and those that cannot be registered as voters are not eligible.

*Paragraph 5. The President of the Republic, the State and Federal District Governors, the Mayors and those who have succeeded or replaced them during their terms of office may be reelected for only one subsequent term.\**

Paragraph 6. In order to run for other offices, the President of the Republic, the State and Federal District Governors and the Mayors have to resign from their respective offices at least six months in advance of the election.

Paragraph 7. The spouse and relatives by blood or marriage, up to the second degree or by adoption, of the President of the Republic, of the Governor of a State

or Territory or of the Federal District, of a Mayor or of those who have replaced them within the six months preceding the election, are not eligible in the jurisdiction of the incumbent, unless they already hold an elective office and are candidates for re-election.

Paragraph 8. A member of the Armed Forces that can be registered as voter is eligible if the following conditions are met:

- X. if he has less than ten years of service, he shall have to take leave from military activities;
- XI. if he has more than ten years of service, he shall be discharged of military duties by his superiors and, if elected, he shall automatically pass into retirement upon the issuing of the official certificate of electoral victory.

Paragraph 9. In order to protect the administrative probity, morality for the exercise of the office, the previous life of the candidate being considered, and the normality and legitimacy of the elections against the influence of the economic power or of the abuse in the holding of office, position or job in the direct or indirect public administration, a supplementary law shall establish other cases of ineligibility and the periods for such ineligibilities to cease.

Paragraph 10. The exercise of an elective mandate may be impugned before the Electoral Courts within a period of fifteen days after the date of the issuing of the official certificate of electoral victory, substantiating the suit with evidence of abuse of economic power, corruption or fraud.

Paragraph 11. The procedure of the suit impugning the office shall be secret, and the plaintiff shall be liable under the law if the suit is reckless or involves manifest bad faith.

**Article 15.** Disfranchisement of political rights is forbidden, the loss or suspension of which rights shall apply only in the event of:

- XII. cancellation of naturalization by a final and unappealable judgement;
- XIII. absolute civil incapacity
- XIV. final and unappealable criminal sentence, for as long as its effects last;
- XV. refusal to comply with an obligation imposed upon everyone or render an alternative service, according to article 5. VIII;
- XVI. administrative dishonesty, according to article 37, paragraph 4.

**Article 16.** The law that alters the electoral procedure shall come into force the date of its publication, and shall not apply to the elections that take place; within one year of it being in force.

## **CHAPTER V - POLITICAL PARTIES**

**Article 17.** The creation, amalgamation, merger and extinction of political parties is free, with due regard for national sovereignty, the democratic regime, the plurality

of political parties, the fundamental rights of the individual, and observing the following precepts:

- XVII. national character;
- XVIII. prohibition from receiving financial assistance from a foreign entity or government or from subordination to same;
- XIX. rendering of accounts to the Electoral Courts;
- XX. operation in the National Congress in accordance with the law.

Paragraph 1. Political parties are ensured of autonomy to define their internal structure, organization and operation, and their by-laws shall establish rules of party loyalty and discipline.

Paragraph 2. After acquiring corporate legal status under civil law, political parties shall register their by-laws at the Superior Electoral Court.

Paragraph 3. Political parties are entitled to monies from the party fund and to free-of-charge access to radio and television, as established by law.

Paragraph 4. Political parties are forbidden to use paramilitary organizations.

### **TITLE III. THE ORGANIZATION OF THE STATE**

#### **CHAPTER I. THE POLITICAL AND ADMINISTRATIVE ORGANIZATION**

**\*Article 18.** The political and administrative organization of the Federative Republic of Brazil comprises the Union, the states, the Federal District and the municipalities, all of them autonomous, as this Constitution provides.

Paragraph 1 - Brasília is the federal capital.

Paragraph 2 - The federal territories are part of the Union and their establishment, transformation into states or reintegration into the state of origin shall be regulated by a supplementary law.

Paragraph 3 - The states may merge into each other, subdivide or dismember to be annexed to others or to form new states or federal territories, subject to the approval of the population directly concerned, by means of a plebiscite, and of the National Congress, by means of a supplementary law.

*Paragraph 4 - The establishment, merger, fusion and dismemberment of municipalities shall be effected through state law, within the period set forth by supplementary federal law, and shall depend on prior consultation, by means of a plebiscite, of the population of the municipalities concerned, after the publication of Municipal Feasibility Studies, presented and published as set forth by law.*

**Article 19.** The Union, the states, the Federal District and the municipalities are forbidden to:

- I. establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law;
- II. refuse to honour public documents;
- III. create distinctions between Brazilians or preferences favouring some.

## **CHAPTER II - THE UNION**

**Article 20.** The following are property of the Union:

- I. the property which presently belongs to it as well as that which may be attributed to it;
- II. the unoccupied lands essential to the defense of the boundaries, the fortifications and military constructions, the federal routes of communication and the preservation of the environment, as defined by law;
- III. the lakes, rivers and any watercourses in lands within its domain or that wash more than one state, that serve as boundaries with other countries or that extend into foreign territory or proceed therefrom, as well as bank lands and river beaches;
- IV. the river and lake islands in zones bordering with other countries, sea beaches, the ocean and off-shore islands, with the exception of those referred to in article 26, II;
- V. the natural resources of the continental shelf and of the exclusive economic zone;
- VI. the territorial sea;
- VII. tide lands and those added to them;
- VIII. the hydraulic energy potentials;
- IX. the mineral resources, including those of the subsoil;
- X. the natural underground cavities and the archaeological and historic sites;
- XI. those lands traditionally occupied by the Indians.

Paragraph 1 - In accordance with the law, the participation in the results of the exploitation of petroleum or natural gas, hydric resources for the purpose of generation of electric power and other mineral resources in the respective territory, continental shelf, territorial sea or exclusive economic zone, financial compensation for the exploitation thereof, is assured to the states Federal District and the municipalities, as well as to agencies of the administration of the Union.

Paragraph 2 - The strip of land up to a hundred and fifty kilometers in width alongside the terrestrial boundaries, designated as boundary zone, considered essential to the defense of the national territory and its occupation and utilization shall be regulated by law.

**\*Article 21.** The Union shall have the power to:

- I. maintain relations with foreign states and participate in international organizations;
- II. declare war and make peace;
- III. ensure national defense;
- IV. allow foreign forces, in the cases provided for in a supplementary law, to pass through the national territory or to remain therein temporarily;

- V. declare a state of siege, a state of defense and federal intervention;
- VI. authorize and control the production and trade of military materiel;
- VII. issue currency;
- VIII. manage the foreign exchange reserves of the country and control financial operations, especially those of credit, exchange and capitalization, as well as insurance and private security;
- IX. prepare and carry out national and regional plans for the ordaining of the territory and for economic and social development;
- X. maintain the postal service and the national air mail;
- XI. *operate, directly or through authorization, concession or permission, the telecommunications services, as set forth by law, which law shall provide for the organization of the services, the establishment of a regulatory agency and other institutional issues;*
- XII. operate, directly or through authorization, concession or permission:
  - a. *the services of sound broadcasting and of sound and image broadcasting;*
  - b. the electric power services and facilities and the energetic exploitation of watercourses, jointly with the states wherein those hydro-energetic potentials are located;
  - c. air and aerospace navigation and airport infrastructure;
  - d. railway and waterway services between seaports and national borders or which cross the boundary of a state or territory;
  - e. interstate and international highway passenger transportation services;
  - f. sea, river and lake ports;
- XIII. organize and maintain the Judicial Power, the Public Prosecution and the Public Legal Defense of the Federal District and territories;
- XIV. organize and maintain the federal police, the federal highway and railway polices as well as the civil police, the military police, the military fire brigade of the Federal District and territories;
- XV. organize and maintain the official services of statistics, geography, geology and cartography of national scope;
- XVI. classify, for indicative purposes, public entertainment and and television programs;
- XVII. grant amnesty;
- XVIII. plan and promote permanent defense against public disasters especially droughts and floods;
- XIX. establish a national system for the management of hydric resources and define criteria for the concession of the right to their use;
- XX. establish directives for urban development, including housing, basic sanitation and urban transportation;
- XXI. establish principles and directives for the national transportation system;
- XXII. perform the services of maritime, air, and border police;
- XXIII. operate nuclear energy services and facilities of any nature, exercise state monopoly over research, mining, enrichment and reprocessing, industrialization and trade in nuclear ores and their by-products, taking into account the following principles and conditions:
  - a. all nuclear activity within the national territory shall only be admitted for peaceful purposes and subject to approval by the National Congress;
  - b. under a concession or permission, authorization is given for the of radioisotopes in research and for medical, agricultural and industrial use as well as for other analogous activities;
  - c. civil liability for nuclear damages does not depend on the existence of fault;
- XXIV. organize, maintain and carry out inspection of working conditions;

- XXV. establish the areas and conditions for the exercise of placer mining activities in associative form.

**Article 22.** The Union has the exclusive power to legislate on:

- I. civil, commercial, criminal, procedural, electoral, agrarian, maritime, aeronautical, space and labour law;
- II. expropriation;
- III. civil and military requisitioning, in case of imminent danger or in times of war;
- IV. waters, energy, informatics, telecommunications and radio broadcasting;
- V. the postal service;
- VI. the monetary and measures systems, metal certificates and guarantees;
- VII. policies for credit, foreign exchange, insurance and transfer of values;
- VIII. foreign and interstate trade;
- IX. guidelines for the national transportation policy;
- X. the regime of the ports and lake, river, ocean, air and aerospace navigation;
- XI. traffic and transportation;
- XII. beds of ore, mines, other mineral resources and metallurgy;
- XIII. nationality, citizenship and naturalization;
- XIV. Indian populations;
- XV. emigration, immigration, entry, extradition and expulsion of foreigners;
- XVI. the organization of the national employment system and conditions for the practice of professions;
- XVII. the judicial organization of the Public Prosecution and of the Public Legal Defense of the Federal District and of the territories, as well as their administrative organization;
- XVIII. the national statistical, cartographic and geological systems;
- XIX. systems of savings, as well as of obtaining and guaranteeing popular savings;
- XX. consortium and lottery systems;
- XXI. general organization rules, troops, material guarantees, drafting and mobilization of the military police and military fire brigades;
- XXII. the jurisdiction of the federal police and of the federal highway- and military polices;
- XXIII. social security;
- XXIV. directives and bases of the national education;
- XXV. public registers;
- XXVI. nuclear activities of any nature;
- XXVII. general rules for all types of bidding and contracting, for the direct and indirect public administration, including foundations instituted and maintained by the Government, in its various spheres, and companies under government control;
- XXVIII. territorial defense, aerospace defense, maritime defense, civil defense, and national mobilization;
- XXIX. commercial advertising.

Sole paragraph - A supplementary law may authorize the states to legislate upon specific questions related to the matters listed in this article.

**Article 23.** The Union, the states, the Federal District and the municipalities, in common, have the power:

- I. to ensure that the Constitution, the laws and the democratic institutions are respected and that public property is preserved;
- II. to provide for health and public assistance, for the protection and safeguard of handicapped persons;
- III. to protect the documents, works and other assets of historical, artistic or cultural value, the monuments, the remarkable landscapes and the archaeological sites;
- IV. to prevent works of art and other assets of historical, artistic and cultural value from being taken out of the country, destroyed or from being deprived of their original characteristics;
- V. to provide the means of access to culture, education and science;
- VI. to protect the environment and to fight pollution in any of its forms;
- VII. to preserve the forests, fauna and flora;
- VIII. to promote agriculture and cattle breeding and organize the supply of foodstuff;
- IX. to promote housing construction programs and the improvement of housing and basic sanitation conditions;
- X. to fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of the unprivileged sectors of the population;
- XI. to register, monitor and control the concessions of rights to research and exploit hydric and mineral resources within their territories;
- XII. to establish and to implement an educational policy for traffic safety.

Sole paragraph - A supplementary law shall establish rules for the cooperation between the Union and the states, the Federal District and the municipalities aiming at the attainment of balanced development and well-being on a nationwide scope.

**Article 24.** The Union, the states and the Federal District have the power to legislate concurrently on:

- I. tax, financial, penitentiary, economic and urbanistic law;
- II. budget;
- III. trade boards
- IV. costs of forensic services;
- V. production and consumption;
- VI. forests, hunting, fishing, fauna, preservation of nature, defense of the soil and natural resources, protection of the environment and control of pollution;
- VII. protection of the historic, cultural and artistic heritage, as well as of assets of touristic interest and landscapes of outstanding beauty;
- VIII. liability for damages to the environment, to consumers, to assets and rights of artistic, aesthetic, historical, and touristic value, as well as to remarkable landscapes;
- IX. education, culture, teaching and sports;
- X. establishment, operation and procedures of small claims courts;
- XI. judicial procedures;
- XII. social security, protection and defense of health;
- XIII. legal assistance and public defense;
- XIV. protection and social integration of handicapped persons;
- XV. protection of childhood and youth;
- XVI. organization, guarantees, rights and duties of the civil policies.

Paragraph 1 - Within the scope of concurrent legislation, the competence of the Union shall be limited to the establishment of general rules.

Paragraph 2 - The competence of the Union to legislate upon general rules does not exclude the supplementary competence of the states

Paragraph 3 - If there is no federal law or general rules, the states shall exercise full legislative competence to provide for their peculiarities.

Paragraph 4 - The supervenience of a federal law over general rules suspends the effectiveness of a state law to the extent that the two are contrary

## **CHAPTER IV - THE FEDERATED STATES**

**\*Article 25.** The states are organized and governed by the Constitutions and laws they may adopt, in accordance with the principles of this Constitution.

Paragraph 1 - All powers that this Constitution does not prohibit the states from exercising shall be conferred upon them.

*Paragraph 2 - The states shall have the power to operate, directly or by means of concession, the local services of piped gas, as provided for by law, it being forbidden to issue any provisional measure for its regulation.*

Paragraph 3 - The states may by means of a supplementary law, establish metropolitan regions, urban agglomerations and micro-regions, formed by the grouping of adjacent municipalities, in order to integrate the organization, the planning and the operation of public functions of common interest.

**Article 26.** The property of the states includes:

- I. surface or subterranean waters, flowing, emerging or in deposit, with the exception, in this case, of those resulting from work carried out by the Union, as provided by law;
- II. the areas, on ocean and coastal islands, which are within their domain, excluding those under the domain of the Union, the municipalities or third parties;
- III. the river and lake islands which do not belong to the Union;
- IV. the unoccupied lands not included among those belonging to the Union.

**Article 27.** The number of Deputies in the Legislative Assembly shall correspond to three times the representation of the state in the Chamber of Deputies and, when the number of thirty-six has been reached, it shall be increased by as many members as the number of Federal Deputies exceeding twelve.

Paragraph 1 - The term of office of the State Deputies shall be four years and the provisions of this Constitution shall be applied to them in what refers to the electoral system, inviolability, immunities, remuneration, loss of office. leave of absence, impediments and incorporation into the Armed Forces.

Paragraph 2 - The remuneration of the State Deputies shall be established in each legislative term, for the subsequent one, by the Legislative Assembly. as provided by articles 150, II, 153, III, and 153, paragraph 2, I, in the proportion of seventy-five percent, at most, of the remuneration established, in legal tender. for the Federal Deputies.

Paragraph 3 - The Legislative Assemblies shall have the power to provide upon their internal regulations, police and the administrative services of their Secretariat and to fill in the respective offices.

**\*Article 28.** *The election of the Governor and the Vice-Governor of a state, for a term of office of four years, shall be held on the first Sunday of October, in the first round, and on the last Sunday of October, in the second round, as the case may be, of the year preceding the one in which the term of office of their predecessors ends, and they shall take office on January 1 of the following year, in accordance, otherwise, with the provisions of article 77.*

Sole paragraph - The Governor who takes another post or function in the direct or indirect public administration shall lose his office, with the exception of the taking of office by virtue of public entrance examination and taking into account the provisions in article 38, I, IV and V.

## CHAPTER IV THE MUNICIPALITIES

**\*Article 29.** Municipalities shall be governed by organic law, voted in two readings, with a minimum interval of ten days between the readings, and approved by two-thirds of the members of the Municipal Chamber, which shall promulgate it, observing the principles established in this Constitution, in the Constitution of the respective state and the following precepts:

- I. election of the Mayor, Vice-Mayor and Councilmen for a term of office of four years, by means of direct election held simultaneously throughout the country;
- II. *election of the Mayor and Vice-Mayor on the first Sunday of October of the year preceding the end of the term of office of those they are to succeed, subject, in the case of municipalities with over two hundred thousand voters, to the provisions set forth in article 77;*
- III. investiture of the Mayor and Vice-Mayor on January 1 of the year subsequent to the year of the election;
- IV. number of councilmen in proportion to the population of the municipalities, in accordance with the following limits:
  - a. a minimum of nine and a maximum of twenty-one in municipalities with up to one million inhabitants;
  - b. a minimum of thirty-three and a maximum of forty-one in municipalities with over one million and under five million inhabitants;
  - c. a minimum of forty-two and a maximum of fifty-five in municipalities with over five million inhabitants;
- V. the remuneration of the Mayor, the Vice-Mayor and the Councilmen stipulated by the Municipal Chamber in each legislature for the subsequent one, in accordance with the provisions set forth in articles 37, XI, 150, II, 153, III, and 153, paragraph 2, I;

- VI. the remuneration of the City Councilmen shall correspond at the most, to seventy-five percent of the remuneration established, in legal tender, for the State Deputies, except for the provisions of article 37, XI;
- VII. the total expenditure with the remuneration of the City Councilmen may not exceed the amount of five percent of the revenue of the Municipality;
- VIII. inviolability of the Councilmen on account of their opinions, words and votes while in office and within the jurisdiction of the municipality;
- IX. prohibitions and incompatibilities, while in the exercise of the office of City Councilman, similar, where applicable, to the provisions of this Constitution for the members of the National Congress and of the Constitution of the respective state for the members of the Legislative Assembly;
- X. trial of the Mayor before the Court of Justice;
- XI. organization of the legislative and supervisory functions of the Municipal Chamber;
- XII. cooperation of the representative associations in municipal planning;
- XIII. public initiative in the presenting of bills of specific interest to the municipality, the city or the neighborhoods, by means of the manifestation of at least five percent of the electorate;
- XIV. loss of the office of mayor, as provided in article 28, sole paragraph.

**Article 30.** The municipalities have the power to:

- I. legislate upon matters of local interest;
- II. supplement federal and state legislations where pertinent;
- III. institute and collect taxes within their jurisdiction, as well as to apply their revenues, without prejudice to the obligation of rendering accounts and publishing balance sheets within the Periods established by law;
- IV. create, organize and suppress districts, with due regard for the state legislation;
- V. organize and render, directly or by concession or permission, the public services of local interest, including mass-transportation, which is of essential nature;
- VI. maintain, with the technical and financial cooperation of the Union and the state, programs of pre-school and elementary school education;
- VII. provide, with the technical and financial cooperation of the Union and the state, health services to the population;
- VIII. promote, wherever pertinent, adequate territorial ordaining, by means of planning and control of use, apportionment and occupation of the urban soil;
- IX. promote the protection of the local historic and cultural heritage, with due regard for federal and state legislation and supervision.

**Article 31.** Supervision of the municipality shall be exercised by the municipal legislature, through outside control, and by the internal control systems of the municipal executive branch, in the manner called for by law.

Paragraph I - Outside control of the Municipal Chamber shall be exercised with the assistance of the state or municipal Court of Accounts, or of the Municipal Councils or Courts of Accounts, where they exist.

Paragraph 2 - The prior report, issued by the competent agency, on the accounts to be rendered annually by the Mayor, shall not prevail only by a decision of two-thirds of the members of the City Council.

Paragraph 3 - The accounts of the municipalities shall remain, for sixty days annually, at the disposal, for examination and consideration, of anT taxpayer, who may question their legitimacy, as the law provides.

Paragraph 4 - The creation of municipal courts, councils or agencies of accounts is forbidden.

## **CHAPTER V - THE FEDERAL DISTRICT AND THE TERRITORIES**

### **SECTION I - THE FEDERAL DISTRICT**

**Article 32.** The Federal District, which may not be divided into municipalities shall be governed by an organic law, voted in two readings, with a minimum interval of ten days, and approved by two-thirds of the Legislative Chamber, which shall enact it, in accordance with the principles set forth in this Constitution.

Paragraph I - The legislative powers reserved to the states and municipalities are attributed to the Federal District.

Paragraph 2 - The election of the Governor and the Vice-Governor, complying with the rules of article 77, and of the District Deputies shall coincide with that of the state Governors and Deputies, for a term of office of the same { rs n

Paragraph 3 - The provisions of article 27 apply to the District Deputies and the Legislative Chamber.

Paragraph 4 - A federal law shall provide for the use, by the Government of the Federal District, of the civil and military polices and the military fire brigade.

### **SECTION II - THE TERRITORIES**

**Article 33.** The law shall provide for the administrative and judicial organization of the territories.

Paragraph 1 - The territories may be divided into municipalities, to which the provisions of Chapter IV of this Title shall be applied, insofar as pertinent.

Paragraph 2 - The accounts of the Government of the territory shall be submitted to the National Congress, with the prior opinion of the Court of An counts af the Union.

Paragraph 3 - In the federal territories with over a hundred thousand inhabitants, in addition to the Governor, appointed as set forth in this Constitution, there shall be judicial agencies of first and second instances, members of the Public Prosecution and Federal Public Legal Defenders; the law shall provide for the elections to the Territory Chamber and its decision- making powers.

## CHAPTER VI - INTERVENTION

**\*Article 34.** The Union shall not intervene in the states or in the Federal District, except:

- I. to maintain national integrity;
- II. to repel foreign invasion or that of one unit of the Federation into another;
- III. to put an end to serious jeopardy to public order;
- IV. to guarantee the free exercise of any of the powers of the units of the Federation;
- V. to reorganize the finances of a unit of the Federation that:
  - a. stops the payment of its funded debt for more than two consecutive years, except for reasons of *force majeure*;
  - b. fails to deliver to the municipalities the tax revenues established in this Constitution, within the periods of time set forth by law;
- VI. to provide for the enforcement of federal law, judicial order or decision;
- VII. to ensure compliance with the following constitutional principles:
  - a. republican form, representative system and democratic regime;
  - b. rights of the human person;
  - c. municipal autonomy;
  - d. rendering of accounts of the direct and indirect public administration
  - e. *the application of the mandatory minimum of the income resulting from state taxes, including those originating from transfers, to the maintenance and development of education.*

**Article 35.** The state shall not intervene in its municipalities, neither the Union in the municipalities located in a federal territory, except when:

- I. the funded debt is not paid for two consecutive years, without reasons of force majeure;
- II. the due accounts are not rendered, in the manner prescribed by law;
- III. the minimum required amount of the municipal revenues has not been applied in the maintenance and development of education;
- IV. the Court of Justice grants a petition to ensure observance of the principles indicated in the state Constitution or to provide for the enforcement of the law, judicial order or decision.

**Article 36.** The issuance of a decree of intervention shall depend:

- I. on a request from the coerced or impeded Legislative or Executive Power, or on a requisition from the Supreme Federal Court, if the coercion is exercised against the Judicial Power, in the case of article 34, IV;
- II. in case of disobedience to a judicial order or decision, on a requisition from the Supreme Federal Court, the Superior Court of Justice or the Superior Electoral Court;
- III. on the granting of a petition from the Attorney-General of the Republic by the Supreme Federal Court, in the case of article 34, VII;
- IV. on the granting of a petition from the Attorney-General of the Republic by the Superior Court of Justice, in the case of refusal to enforce a federal law.

Paragraph 1 - The decree of intervention, which shall specify the extent, the period and the conditions of enforcement and which, if pertinent, shall appoint the intervenor, shall be

submitted to the National Congress or the State Legislative Assembly for consideration, within twenty-four hours.

Paragraph 2 - If the National Congress or the Legislative Assembly are not in session, a special session shall be called within the same twenty- four hours.

Paragraph 3 - In the case of article 34, VI and VII, or article 35, IV, when the consideration by the National Congress or the Legislative Assembly may be waived, the decree shall be limited to suspending the enforcement of the impugned act, if such measure suffices to restore normality.

Paragraph 4 - Upon cessation of the reasons that caused the intervention, the authorities removed from their offices shall return to them, unless there is some legal impediment.

## **CHAPTER VII PUBLIC ADMINISTRATION**

### **SECTION I - GENERAL PROVISIONS**

**\*Article 37.** The direct or indirect public administration of any of the powers of the Union, the states, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity and also the following:

- I. public offices, positions and functions are accessible to all Brazilians who meet the requirements established by law;
- II. investiture in a public office or position depends on previously passing an entrance examination consisting of tests or tests and presentation of academic and professional credentials, except for appointment to a commission office declared by law as being of free appointment and discharge;
- III. the period of validity of a public entrance examination shall be up to two years, extendable once for a like period of time;
- IV. during the unextendable period established in the public call notice, a person who has passed a public entrance examination of tests, or of tests and presentation of academic and professional credentials, shall be called with priority over newly approved applicants, to take an office or position in the career;
- V. commission offices or positions of trust shall be exercised, preferentially, by civil servants holding a post in a technical or professional career, in the cases and under the conditions established in law;
- VI. the right to free union association is guaranteed to civil servants;
- VII. the right to strike shall be exercised in the manner and within the limits defined by a supplementary law;
- VIII. the law shall reserve a percentage of public offices and positions for handicapped persons and shall define the criteria for their admittance
- IX. the law shall establish the cases of hiring for a limited period of time to meet a temporary need of exceptional public interest;
- X. the general review of the remuneration of Government employees without distinction between the indices applied to civil and military servants, shall always occur on the same date;
- XI. the law shall establish the maximum limit and the proportion between the highest and the lowest remuneration of public servants, taking into account, as maximum limits and within the sphere of the respective powers, the amounts received as

remuneration, in legal tender of any sort, by members of the National Congress, Ministers of State and Justices of the Supreme Federal Court and the corresponding offices in the states, the Federal District and the territories and, in the municipalities, the amount received as remuneration, in legal tender, by the Mayor;

- XII. the salaries for positions of the Legislative and Judicial Powers may not be higher than those paid by the Executive Power;
- XIII. the linkage or equalization of salaries, for purposes of the remuneration of the personnel in the public services, is forbidden, except for the provisions of the preceding item and of article 39, paragraph 1;
- XIV. the pecuniary raises received by a government employee shall not be computed or accumulated for purposes of granting subsequent raises, for the same reason or on an identical basis;
- XV. *the salaries of government employees may not be reduced, and the remuneration shall comply with the provisions of article 37, XI and XII, 150, II, 153, III, and paragraph 2, I;*
- XVI. remunerated accumulation of public offices is forbidden, except when there is compatibility of working hours:
  - a. of two teaching positions;
  - b. of one teaching position with another technical or scientific position;
  - c. of two exclusively medical positions;
- XVII. the prohibition to accumulate extends to positions and functions and includes autonomous government agencies, public companies, mixed- capital companies and foundations maintained by the Government;
- XVIII. the financial administration and its revenue officers shall, within their spheres of authority and jurisdiction, have the right to precedence over the other administrative sectors, as the law provides;
- XIX. a public company, a mixed-capital company, an autonomous Government agency or a public foundation may only be created by means of a specific law;
- XX. the creation of subsidiaries of the agencies mentioned in the preceding item depends on legislative authorization, in each case, as well as the participation by any of them in a private company;
- XXI. with the exception of the cases specified in law, public works, services, purchases and disposals shall be contracted by public bidding proceedings that ensure equal conditions to all bidders, with clauses that establish payment obligations, maintaining the effective conditions of the bid. as the law provides, which shall only allow the requirements of technical and economic qualifications indispensable to guarantee the fulfilling of the obligations.

Paragraph 1 - The publicity of the acts, programmes, public works, services and campaigns of Government agencies shall be of educational, informative or social orientation character, and shall not contain names, symbols or images that characterize personal propaganda of Government authorities or employees.

Paragraph 2 - Non-compliance with the provisions of items II and III shall result in the nullity of the act and punishment of the responsible authority, as the law provides.

Paragraph 3 - Complaints relating to the rendering of public services shall be regulated by law.

Paragraph 4 - Acts of administrative dishonesty shall result in the suspension of political rights, loss of public function, prohibition to transfer personal property and reimbursement to the Public Treasury, in the manner and grading established by law, without prejudice to the applicable criminal action.

Paragraph 5 - The law shall establish the limitations for illicit acts, performed by any agent, whether or not a Government employee, which cause losses to the Public Treasury, without prejudice to the respective claims for reimbursement.

Paragraph 6 - Public legal entities and private legal entities rendering public services shall be liable for damages that any of their agents, acting as such, cause to third parties, ensuring the right of recourse against the liable agent in cases of malice or fault.

**Article 38.** The following provisions are applicable to civil servants holding an elective office:

- I. in the case of a federal, state or district elective office, he shall leave his office, position or function;
- II. if vested with the office of Mayor, he shall take leave from his post, position or function and he may opt for the corresponding remuneration;
- III. if vested with the office of City Councilman, if there is compatibility of working hours, he shall receive the benefits of his post, position or function, without prejudice to the remuneration of his elective office and in the case there is no such compatibility, the provisions of the preceding item shall be applied;
- IV. in any case requiring leave of absence for the exercise of an elective office, his time of service shall be counted in full, for all legal effects, except for promotion by merit;
- V. for purposes of social security benefits, in the case of leave of absence, the amounts shall be established as if he were in activity.

## **SECTION II - CIVIL SERVANTS**

**Article 39.** The Union, the states, the Federal District and the municipalities shall institute, within their jurisdiction, a sole juridical regime and career plans for the employees of the direct public administration, the autonomous Government agencies and the public foundations.

Paragraph 1 - The law shall guarantee, to the direct administration employees, equal salaries for offices in the same Power with equal or similar duties or between employees of the Executive, Legislative or Judicial Powers, except for advantages of a personal nature and those corresponding to the type of work or the workplace.

Paragraph 2 - The provisions of article 7, IV, VI, VII, VIII, IX, XII, XIII, XV, XVI, XVII, XVIII, XIX, XX, XXII, XXIII and XXX shall apply to these employees.

**Article 40.** A civil servant shall go into retirement:

- I. for permanent disability, receiving full pension if such disability results from a work accident, professional disease or a serious, contagious or incurable illness, as specified by law, and proportional pension in all other cases:

- II. compulsorily, at seventy years of age, with a pension proportional to the period of service;
- III. voluntarily:
  - a. upon thirty-five years of service, if a man, and upon thirty years, if a woman, with full pay;
  - b. upon thirty years of effective exercise in teaching positions, if a man, and upon twenty-five years, if a woman, with full pay;
  - c. upon thirty years of service, if a man, and upon twenty-five years, if a woman, with pay in proportion to this period;
  - d. at sixty-five years of age, if a man, and at sixty, if a woman, with pay in proportion to the period of service.

Paragraph 1 - A supplementary law may establish exceptions to the provisions of item III, a and c, in the case of the exercise of activities considered strenuous, unhealthy or dangerous.

Paragraph 2 - The law shall provide for retirement in temporary offices or positions.

Paragraph 3 - The period of federal, state or municipal public service shall be calculated in full for purposes of retirement and placement on paid availability

Paragraph 4 - The retirement pension shall be revised, in the same proportion and on the same date, whenever the remuneration of the servants in activity is changed, and any benefits or advantages subsequently granted to the servants in activity shall also be extended to the retired servants, including those resulting from the transformation or reclassification of the office or function from which they retired, as the law provides.

Paragraph 5 - The benefit of pension for death shall correspond to the full salary or earnings of the deceased employee, up to the limit established in law, complying with the provisions of the preceding paragraph.

Paragraph 6 - The retirement and pension benefits of the federal civil servants shall be financed by resources originating from the Union and from the contributions of the civil servants. under the terms of the law.

**Article 41.** Servants employed by virtue of public entrance examinations acquire tenure after two years of actual service.

Paragraph 1 - A tenured civil servant shall only lose his office by virtue of a final and unappealable judicial decision or by means of an administrative process, in which he is assured ample defense.

Paragraph 2 - If the dismissal of a tenured civil servant is voided by a judicial decision, he shall be reinstated and the occupant of the vacancy shall be led back to his original office, with no right to indemnity, taken to another office or placed on paid availability.

Paragraph 3 - If the office is declared extinct or unnecessary. a tenured civil servant shall remain on paid availability until he is adequately placed in another office.

### **\*SECTION III - THE MILITARY OF THE STATES, OF THE FEDERAL DISTRICT AND OF THE TERRITORIES**

**\*\*Article 42.** *The members of the Military Police and of the Military Fire Brigades, institutions whose organization is based on hierarchy and discipline, are military of the States, of the Federal District, and of the Territories.*

*Paragraph 1. The provisions of article 14, paragraph 8; article 40, paragraph 3; and of article 142, paragraphs 2 and 3 apply to the military of the States, of the Federal District and of the Territories, in addition to other provisions that the law may establish, it being incumbent upon specific state legislation to provide for the matters of article 142, paragraph 3, item X, the ranks of the officers being awarded by the respective State Governors.*

*Paragraph 2. The provisions of article 40, paragraphs 4 and 5 apply to military of the States, of the Federal District and of the Territories, and to their pensioners, and the provision of article 40, paragraph 6 applies to the military of the Federal District and the Territories.*

### **SECTION IV - THE REGIONS**

**Article 43.** For administrative purposes, the Union may co-ordinate its action in one same social and geo-economic complex, seeking to attain its development and to reduce regional inequalities.

Paragraph 1 - A supplementary law shall provide for:

- I. the conditions for the integration of developing regions;
- II. the composition of the regional agencies which shall carry out, as provided by law, the regional plans included in the national social and economic development plans approved concurrently.

Paragraph 2 - The regional incentives shall include, besides others, as prescribed by law:

- I. equality of tariffs, freight rates, insurance and other cost and price items which are within the responsibility of the Government;
- II. favoured interest rates for the financing of priority activities;
- III. exemptions, reductions or temporary deferment of federal taxes owed by individuals or by legal entities;
- IV. priority in the economic and social use of rivers and dammed or dammable water masses in low-income regions subject to periodical droughts.

Paragraph 3 - In the areas referred to in paragraph 2, IV, the Union shall grant incentives to the recovery of arid lands and shall cooperate with small and medium-size rural landowners in the implementing of water sources and small-scale irrigation in their tracts of land.

**TITLE IV- THE ORGANIZATION OF THE POWERS**  
**CHAPTER I - THE LEGISLATIVE. POWER**  
**SECTION I - THE NATIONAL CONGRESS**

**Article 44.** The Legislative Power is exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate.

Sole paragraph - Each legislative term shall have the duration of four years. Article 45. The Chamber of Deputies is composed of representatives of the people, elected, by the proportional system, in each state, territory and in the Federal District.

Paragraph 1 - The total number of Deputies, as well as the representation of the states and of the Federal District shall be established by a supplementary law, in proportion to the population, and the necessary adjustments shall be made in the year preceding the elections, so that none of those units of the Federation has less than eight or more than seventy Deputies.

Paragraph 2 - Each territory shall elect four Deputies.

**Article 46.** The Federal Senate is composed of representatives of the states and of the Federal District, elected by a majority vote.

Paragraph 1 - Each state and the Federal District shall elect three Senators for a term of office of eight years.

Paragraph 2 - One-third and two-thirds of the representation of each state and of the Federal District shall be renewed every four years, alternately.

Paragraph 3 - Each Senator shall be elected with two substitutes.

**Article 47.** Except where there is a constitutional provision to the contrary, the decisions of each House and of their committees shall be taken by a majority vote, when the absolute majority of its members is present.

**SECTION II - POWERS OF THE NATIONAL CONGRESS**

**Article 48.** The National Congress shall have the power, with the sanction of the President of the Republic, which shall not be required for the matters specified in articles 49, 51 and 52, to provide for all the matters within the competence of the Union and especially on:

- I. system of taxation, collection of taxes and income distribution;
- II. pluriannual plan, budgetary directives, annual budget, credit transactions, public debt and issuance of currency;
- III. establishment and modification of Armed Forces troops;
- IV. national, regional and sectorial plans and programmes of development;
- V. boundaries of the national territory, air and maritime space and property of the Union;
- VI. incorporation, subdivision or dismemberment of areas of territories or states, after consulting with the respective Legislative Assembly;
- VII. temporary transference of the seat of the Federal Government;

- VIII. granting of amnesty;
- IX. administrative and judicial organization of the Public Prosecution and the Public Legal Defense of the Union and of the territories, and judicial organization of the Public Prosecution and the Public Legal Defense of the Federal District;
- X. establishment, transformation and extinction of public offices, positions and functions;
- XI. establishment, organization and duties of the Ministries and public administration agencies;
- XII. telecommunications and radio broadcasting;
- XIII. financial, foreign exchange and monetary matters, financial institutions and their operations;
- XIV. currency, currency issuance limits, and amount of federal indebtedness.

**Article 49.** It is exclusively the competence of the National Congress:

- I. to decide conclusively on international treaties, agreements or a which result in charges or commitments that go against the national property;
- II. to authorize the President of the Republic to declare war, to make peace and to permit foreign forces to pass through the national territory or remain therein temporarily, with the exception of the cases provided by a supplementary law;
- III. to authorize the President and the Vice-President of the Republic to leave the country, when such absence exceeds fifteen days;
- IV. to approve a state of defense and federal intervention, authorize a state of siege or suspend any of these measures;
- V. to stop the normative acts of the Executive Power which exceed their regimental authority or the limits of legislative delegation;
- VI. to transfer its seat temporarily;
- VII. to establish identical remuneration for Federal Deputies and Senators, in each legislative term, for the subsequent one, taking into account the provisions of articles 150, II, 153, III, and 153, paragraph 2, I;
- VIII. to establish, for each fiscal year, the remuneration of the President and the Vice-President of the Republic and of the Ministers of State, taking into account the provisions of articles 150, II, 153, III, and 153, paragraph 2, I;
- IX. to examine each year the accounts rendered by the President of the Republic and to consider the reports on the execution of Government plans;
- X. to supervise and control directly or through either of its Houses, the acts of the Executive Power, including those of the indirect administration;
- XI. to ensure the preservation of legislative competence in the face of the normative incumbency of the other Powers;
- XII. to consider the acts of concession and renewal of concession of radio and television stations;
- XIII. to choose two-thirds of the members of the Court of Accounts of the Union;
- XIV. to approve initiatives of the Executive Power referring to nuclear activities
- XV. to authorize a referendum and to call a plebiscite;
- XVI. to authorize, in Indian lands, the exploitation and use of hydric resources and the prospecting and mining of mineral resources
- XVII. to give prior approval to the disposal or concession of public lands with an area of over two thousand and five hundred hectares

**Article 50.** The Chamber of Deputies and the Federal Senate, or any of their committees, may summon a Minister of State or any chief officers of agencies directly subordinate to

the Presidency of the Republic to personally render information on a previously determined matter, and absence without adequate justification shall constitute a crime of malversation.

Paragraph 1 - The Ministers of State may attend the Federal Senate, the Chamber of Deputies or any of their committees, on their own initiative and by agreement with the respective Directing Board, to report on a matter of relevance to their Ministry

Paragraph 2 - The Directing Boards of the Chamber of Deputies and of the Federal Senate may forward to the Ministers of State, or any of the persons mentioned in the caption of this article, written requests for information, and refusal or non-compliance, within a period of thirty days, as well as the rendering of false information. shall constitute a crime of malversation.

### **SECTION III - THE CHAMBER OF DEPUTIES**

**Article 51.** It is exclusively the competence of the Chamber of Deputies:

- I. to authorize, by two-thirds of its members, legal proceeding to be initiated against the President and the Vice-President of the Republic and the Ministers of State;
- II. to effect the taking of accounts of the President of the Republic, when they are not presented to the National Congress within sixty days of the opening of the legislative session;
- III. to draw up its internal regulations;
- IV. to provide for its organization, functioning, police, creation, transformation or extinction of offices, positions and functions of its services, and the establishment of their respective remuneration, taking into account the guidelines set forth in the law of budgetary directives;
- V. to elect the members of the Council of the Republic, in the manner prescribed by article 89. VII.

### **SECTION IV - THE FEDERAL SENATE**

**Article 52.** It is exclusively the competence of the Federal Senate:

- I. to effect the legal proceeding and trial of the President and Vice-President of the Republic for crime of malversation and the Ministers of State for crimes of the same nature relating to those;
- II. to effect the legal proceeding and trial of the Justices of the Supreme Federal Court, the Attorney-General of the Republic and the Advocate-General of the Union for crimes of malversation;
- III. to give prior consent, by secret voting, after public hearing, on the selection of
  - a. judges, in the cases established in this Constitution;
  - b. Justices of the Court of Accounts of the Union appointed by the President of the Republic;
  - c. Governor of a territory;
  - d. president and directors of the Central Bank;
  - e. Attorney-General of the Republic; v
  - f. holders of other offices, as the law may determine;

- IV. to give prior approval, by secret voting, after closed hearing, on the selection of heads of permanent diplomatic missions;
- V. to authorize foreign transactions of a financial nature, of the interest of the Union, the states, the Federal District, the territories and the municipalities;
- VI. to establish, as proposed by the President of the Republic, total limits for the entire amount of the consolidated debt of the Union, the states, the Federal District and the municipalities;
- VII. to provide for the total limits and conditions for foreign and domestic credit transactions of the Union, the states, the Federal District and the municipalities, of their autonomous Government entities and other entities controlled by the Federal Government;
- VIII. to provide for limits and conditions for the concession of a guarantee by the Union in foreign and domestic credit transactions;
- IX. to establish total limits and conditions for the entire amount of the debt of the states, the Federal District and the municipalities;
- X. to stop the application, in full or in part, of a law declared unconstitutional by final decision of the Supreme Federal Court;
- XI. to approve, by absolute majority and by secret voting, the removal from office of the Attorney-General of the Republic before the end of his term of office;
- XII. to draw up its internal regulations;
- XIII. to provide for its organization, functioning, police, creation, transformation or extinction of offices, positions or functions of its services and establishment of their respective remuneration, taking into account the guidelines established in the law of budgetary directives;
- XIV. to elect the members of the Council of the Republic, as established in article 89, VII.

Sole paragraph - In the cases provided for in items I and II, the Chief Justice of the Supreme Federal Court shall act as President and the sentence, which may only be issued by two-thirds of the votes of the Federal Senate, shall be limited to the loss of office with disqualification to hold any public office for a period of eight years, without prejudice to other applicable judicial sanctions.

## **SECTION V - DEPUTIES AND SENATORS**

**Article 53.** The Deputies and Senators enjoy inviolability on account of their opinions, words and votes.

Paragraph 1 - From the date of the issuance of the certificate of electoral victory, the members of the National Congress may not be arrested, except in *flagrante delicto* of an umbailable crime, nor may they be criminally prosecuted, without prior authorization by the respective House.

Paragraph 2 - Rejection of the demand for authorization or the absence of a decision shall suspend the limitation for the duration of the term of office.

Paragraph 3 - In the event of *flagrante delicto* of an umbailable crime, the case records shall be sent within twenty-four hours to the respective House which, by the secret vote of the majority of its members, shall decide on the arrest and authorize or not the indictment.

Paragraph 4 - The Deputies and Senators shall be tried by the Supreme Federal Court.

Paragraph 5 - The Deputies and Senators shall not have the obligation to render testimony or information received or given by virtue of the exercise of their mandate, nor against persons who rendered them information or received information from them.

Paragraph 6 - Incorporation into the Armed Forces of Deputies and Senators even if they hold military rank and even in time of war shall depend upon the previous granting of permission by the respective House.

Paragraph 7 - The immunities of Deputies and Senators shall be maintained during a state of siege and may only be suspended by the vote of two-thirds of the members of the respective House, in the case of acts committed outside the premises of Congress, which are not compatible with the implementation of such measure.

**Article 54.** Deputies and Senators may not:

- I. after the issuance of their certificate of electoral victory:
  - a. sign or maintain a contract with a public legal entity, autonomous Government agency, public company, mixed-capital company or public utility company, unless the contract is in accordance with uniform clauses;
  - b. accept or hold a paid office, function or position including those from which they may be dismissed ad nutum in the entities mentioned in the preceding subitem;
- II. after taking office:
  - a. be the owners, controllers or directors of a company which enjoys benefits arising from a contract with a public legal entity or perform a remunerated position therein;
  - b. hold an office or function from which they may be dismissed ad nutum, in the entities mentioned in item I, a;
  - c. act as lawyer in a cause in which any of the entities referred to in item I, a, has an interest;
  - d. be the holders of more than one public elective position or office

**Article 55.** A Deputy or Senator shall lose his office:

- I. if he violates any of the prohibitions established in the preceding article;
- II. if his conduct is declared incompatible with parliamentary decorum;
- III. if he fails to appear, in each legislative session, at one-third of the regular sessions of the House to which he belongs, except for a leave of absence or a mission authorized by the House concerned;
- IV. if his political rights have been lost or suspended;
- V. whenever decreed by the Electoral Courts, in the cases established in this Constitution;
- VI. if he is criminally convicted by a final and unappealable sentence

Paragraph 1 - Abuse of the prerogatives ensured to a Congressman or the gaining of undue advantages, in addition to the cases defined in the internal regulations, is incompatible with parliamentary decorum.

Paragraph 2 - In the cases of items I, II and VI, loss of office shall be declared by the Chamber of Deputies or the Federal Senate, by secret voting and absolute majority, on the initiative of the respective Directing Board or of a political party represented in the National Congress, full defense being ensured.

Paragraph 3 - In the cases set forth in items III to V, the loss shall be declared by the Directing Board of the respective House, *ex officio* or upon the initiative of any of its members, or of a political party represented in the National Congress, full defense being ensured.

Paragraph 4 - The resignation of a Congressman submitted to a legal suit that aims at or may lead to loss of mandate, under the provisions of this article, will have its effects suspended until the final deliberations mentioned in paragraphs 2 and 3.

**Article 56.** A Deputy or Senator shall not lose his office:

- I. if vested with the office of Minister of State, Governor of a territory, Secretary of a state, of the Federal District, of a territory, of a state capital or head of a temporary diplomatic mission;
- II. if on leave of absence from the respective House, by virtue of illness or, without remuneration, to attend to private matters, provided that, in this case, the absence does not exceed one hundred and twenty days per legislative session.

Paragraph 1. The substitute shall be called in cases of vacancy, of investiture in the functions set forth in this article or of leave of absence exceeding one hundred and twenty days.

Paragraph 2 - Upon the occurrence of a vacancy and there being no substitute, if more than fifteen months remain before the end of the term of office, an election shall be held to fill it.

Paragraph 3 - In the event of item I, the Deputy or Senator may opt for the remuneration of the elective office.

## **SECTION VI - THE SESSIONS**

**Article 57.** The National Congress shall meet each year in the Federal Capital. from February 15 to June 30 and from August 1 to December 15.

Paragraph 1 - If sessions scheduled for these dates fall on a Saturday, a Sunday or a holiday, they shall be transferred to the subsequent workday.

Paragraph 2 - The legislative session shall not be interrupted before the approval of the bill of budgetary directives

Paragraph 3 - In addition to other cases provided for in this Constitution the Chamber of Deputies and the Federal Senate shall meet in a joint session to

- I. inaugurate the legislative session;

- II. draw up the common regulations and regulate the creation of services common to both Houses;
- III. take the oath of the President and of the Vice-President of the Republic;
- IV. acknowledge a veto and resolve thereon.

Paragraph 4 - Both Houses shall meet in a preparatory session, beginning February 1 of the first year of the legislative term, for the installation of its members and the election of the respective Directing Boards, for a term of office of two years, the re-election to the same office in the immediately subsequent election being prohibited.

Paragraph 5 - The Directing Board of the National Congress shall be presided by the President of the Federal Senate and the remaining offices shall be held, alternately, by the holders of equivalent offices in the Chamber of Deputies and in the Federal Senate.

Paragraph 6 - Special sessions of the National Congress shall be called:

- I. by the President of the Federal Senate, in the event of a decree of a state of defense or of federal intervention, of a demand for the authorization to decree a state of siege and the taking of oath and inauguration of the President and the Vice-President of the Republic,
- II. by the President of the Republic, by the Presidents of the Chamber of Deputies and of the Federal Senate or by request of the majority of the members of both Houses, in case of urgency or important public interest.

Paragraph 7 - In a special legislative session, the National Congress shall deliberate only upon the matter for which it was called

## **SECTION VII - THE COMMITTEES**

**Article 58.** The National Congress and both its Houses shall have permanent and temporary committees, established in the manner and with the incumbencies set forth in the respective regulations or in the act from which their creation

Paragraph 1. In the composition of the Directing Boards and of each committee, the proportional representation of the parties or the parliamentary groups which participate in the respective House shall be ensured to the extent possible.

Paragraph 2 - The committees have the power, on account of the matter under their authority.

- I. to debate and vote on bills of law which, in accordance with the regulations, are exempt from being submitted to the Plenary Assembly, except in the event of an appeal from one-tenth of the members of the respective House
- II. to hold public audiences with entities of civil society;
- III. to summon Ministers of State to render information on matters inherent to their duties;
- IV. to receive petitions, claims, statements or complaints from any person against acts or omissions of Government authorities or entities;
- V. to request the testimony of any authority or citizen;

- VI. to examine construction work programs and national, regional and sectorial development plans and to report thereupon.

Paragraph 3 - Parliamentary inquiry committees, which shall have the powers of investigation inherent to the judicial authorities, in addition to other powers set forth in the regulations of the respective Houses, shall be created by the Chamber of Deputies and by the Federal Senate, jointly or separately, upon the request of one-third of its members, to investigate a given fact and for a certain period of time? and their conclusions shall, if the case may be, be forwarded to the Public Prosecution to determine the civil or criminal liability of the offenders.

Paragraph 4 - During recess there shall be a committee to represent the National Congress, elected by both its Houses in the last regular session of the legislative session, with incumbencies defined in the common regulations, the composition of which shall repeat, to the extent possible, the proportional representation of the political parties.

## **SECTION VIII - THE LEGISLATIVE PROCESS**

### **SUBSECTION I - GENERAL PROVISION**

**Article 59.** The legislative process comprises the preparation of:

- I. amendments to the Constitution;
- II. supplementary laws;
- III. ordinary laws;
- IV. delegated laws;
- V. provisional measures;
- VI. legislative decrees;

Sole paragraph - A supplementary law shall provide for the preparation, drafting, amendment and consolidation of laws.

### **SUBSECTION II - AMENDMENTS TO THE CONSTITUTION**

**Article 60.** The Constitution may be amended on the proposal of:

- I. at least one-third of the members of the Chamber of Deputies or of the Federal Senate;
- II. the President of the Republic;
- III. more than one half of the Legislative Assemblies of the units of the Federation, each of them expressing itself by the relative majority of its members.

Paragraph I - The Constitution shall not be amended while federal intervention, a state of defense or a state of siege is in force.

Paragraph 2 - The proposal shall be discussed and voted upon in each House of the National Congress, in two readings, and it shall be considered approved if it obtains in both readings, three-fifths of the votes of the respective members.

Paragraph 3 - An amendment to the Constitution shall be promulgated by the Directing Boards of the Chamber of Deputies and the Federal Senate with the respective sequence number.

Paragraph 4 - No proposal of amendment shall be considered which is aimed at abolishing:

- I. the federative form of State;
- II. the direct, secret, universal and periodic vote;
- III. the separation of the Government Powers;
- IV. individual rights and guarantees.

Paragraph 5 - The matter dealt with in a proposal of amendment that is rejected or considered impaired shall not be the subject of another proposal in the same legislative session.

### **SUBSECTION III - THE LAWS**

**\*Article 61.** The initiative of supplementary and ordinary laws is within the competence of any member or committee of the Chamber of Deputies and the Federal Senate or the National Congress, the President of the Republic, the Supreme Federal Court, the Superior Courts, the Attorney-General of the Republic and the citizens, in the manner and in the cases provided for in this Constitution.

Paragraph 1 - It is the exclusive initiative of the President of the Republic to introduce laws that:

- I. determine or modify the number of Armed Forces troops;
- II. provide for:
  - a. creation of public offices, functions or positions in the direct administration and in autonomous Government agencies or increases in their salaries;
  - b. administrative and judicial organization, tax and budgetary matters, public services and administrative personnel of the territories;
  - c. *government employees of the Union and Territories, their legal statute, appointment to offices, tenure and retirement;*
  - d. organization of the Public Prosecution and of the Public Legal Defense of the Union, as well as general rules for the organization of the Public Prosecution and the Public Legal Defense of the states, the Federal District and the territories;
  - e. creation, structuring and duties of the Ministries and public administration agencies;
  - f. *military of the Armed Forces, their legal statute, appointment to offices, promotions, tenure, remuneration, retirement, and transfer to the reserve.*

Paragraph 2 - The initiative of the people may be exercised by means of the presentation to the Chamber of Deputies of a bill of law subscribed by at least one percent of the national electorate, distributed throughout at least five states, with not less than three-tenths of one percent of the voters in each of them.

**Article 62.** In important and urgent cases, the President of the Republic may adopt provisional measures with the force of law and shall submit them to the National Congress immediately, and if Congress is in recess, a special session shall be called to meet within five days.

Sole paragraph - Provisional measures shall lose effectiveness from the day of their issuance, if they are not converted into law within a period of thirty days as from their publication and the National Congress shall regulate the legal relations arising therefrom.

**Article 63.** An increase in expenditure proposals shall not be admitted:

- I. in bills of the exclusive initiative of the President of the Republic, except for the provisions of article 166, paragraphs 3 and 4;
- II. in bills concerning the organization of the administrative services of the Chamber of Deputies, the Federal Senate, the Federal Courts and the Public Prosecution.

**Article 64.** The discussion and voting of the bills of law which are the initiative of the President of the Republic, the Supreme Federal Court and of the Superior Courts shall start in the Chamber of Deputies.

Paragraph 1 - The President of the Republic may request urgency in the examination of bills of his own initiative.

Paragraph 2 - If, in the case of the preceding paragraph, the Chamber of Deputies and the Federal Senate fail to act, each one, successively on the proposition, within up to forty-five days, this proposition shall be included in the order of the day and the deliberation upon other subjects shall be suspended, in order that the voting may be concluded.

Paragraph 3 - Amendments of the Federal Senate shall be examined by the Chamber of Deputies within a period of ten days, in accordance, otherwise, with the provisions of the preceding paragraph.

Paragraph 4 - The periods of time referred to in paragraph 2 shall not be counted while the Congress is in recess and shall not apply to the bills of codes.

**Article 65.** A bill of law approved by one House shall be reviewed by the other in a single reading of discussing and voting and sent for sanctioning or promulgation, if approved by the reviewing House, or it shall be dismissed, if rejected.

Sole paragraph - If the bill is amended, it shall return to the House where it was proposed.

**Article 66.** The House in which voting is concluded shall send the bill of law to the President of the Republic, who, if he concurs, shall sanction it.

Paragraph 1 - If the President of the Republic considers the bill of law, wholly or in part, unconstitutional or contrary to public interest, he shall veto it, wholly or in part, within fifteen work days, counted from the date of receipt and he shall, within forty-eight hours, inform the President of the Senate of the reasons of his veto.

Paragraph 2 - A partial veto shall only comprise the full text of an article, paragraph, item or subitem.

Paragraph 3 - After a period of fifteen days, the silence of the President of the Republic shall be considered as sanctioning.

Paragraph 4 - The veto shall be examined in a joint session, within thirty days, counted from the date of receipt, and may only be rejected by the absolute majority of the Deputies and Senators, by secret voting.

Paragraph 5 - If the veto is not upheld, the bill shall be sent to the President of the Republic for promulgation.

Paragraph 6 - If the period established in paragraph 4 elapses without a decision being reached, the veto shall be included in the order of the day of the following session, and all other propositions shall be suspended until its final voting, except for the matters referred to in article 62, sole paragraph.

Paragraph 7 - If, in the cases of paragraphs 3 and 5, the law is not promulgated within forty-eight hours by the President of the Republic, the President of the Senate shall enact it and if the latter fails to do so within the same period, the Vice-President of the Senate shall do so.

**Article 67.** The matter dealt with in a rejected bill of law may only be the subject of a new bill during the same legislative session, upon proposal of the absolute majority of the members of either House of the National Congress.

**Article 68.** Delegated laws shall be drawn up by the President of the Republic, who shall request delegation from the National Congress.

Paragraph 1 - There shall be no delegation of acts falling within the exclusive competence of the National Congress, of those within the exclusive competence of the Chamber of Deputies or the Federal Senate, of matters reserved for supplementary laws and of legislation on:

- I. the organization of the Judicial Power and of the Public Prosecution, the career and guarantees of their members;
- II. nationality, citizenship, individual, political and electoral rights,
- III. pluriannual plans, budgetary directives and budgets.

Paragraph 2 - The delegation to the President of the Republic shall take the form of a resolution of the National Congress, which shall specify its contents and the terms of its exercise.

Paragraph 3 - If the resolution calls for consideration of the bill by the National Congress, the latter shall do so in a single voting, any amendment being forbidden.

**Article 69.** Supplementary laws shall be approved by absolute majority.

## **SECTION IX - ACCOUNTING, FINANCIAL AND BUDGETARY CONTROL**

**Article 70.** Control of accounts, finances, budget, operations and property of the Union and of the agencies of the direct and indirect administration, as to lawfulness, legitimacy, economic efficiency, application of subsidies and waiver of revenues, shall be exercised by the National Congress, by means of external control and of the internal control system of each Power.

Sole paragraph - Accounts shall be rendered by any individual or public entity which uses, collects, keeps, or manages public monies, assets or values, or those for which the Union is responsible or which, on behalf of the Union, assumes obligations of a pecuniary nature.

**Article 71.** External control, incumbent on the National Congress, shall be exercised with the aid of the Federal Court of Accounts, which shall:

- I. examine the accounts rendered annually by the President of the Republic, by means of a prior opinion which shall be prepared in sixty days counted from receipt;
- II. evaluate the accounts of the administrators and other persons responsible for public monies, assets and values of the direct and indirect administration, including foundations and companies instituted and maintained by the Federal Government as well as the accounts of those who have caused a loss, misplacement or other irregularity resulting in losses to the public treasury;
- III. examine, for the purpose of registration, the lawfulness of acts of admission of personnel, on any account, in the direct and indirect administration, including the foundations instituted and maintained by the Federal Government, with the exception of the appointments to commission offices, as well as the granting of civil and military retirement and pensions, except for subsequent improvements which do not alter the legal fundamentals of the conceding act;
- IV. carry out, on its own initiative or on that of the Chamber of Deputies, of the Federal Senate, or of a technical or inquiry committee, inspection and audits of an accounting, financial, budgetary, operational or property nature in the administrative units of the Legislative, Executive and Judicial Powers and other entities referred to in item II;
- V. control the national accounts of supranational companies in whose capital stock the Union holds a direct or indirect interest, as set forth in the acts of incorporation;
- VI. control the use of any funds transferred by the Union, by means of an agreement, arrangement, adjustment or any other similar instrument, to a state, the Federal District or a municipality;
- VII. render the information requested by the National Congress, by either of its Houses or by any of the respective committees concerning accounting, financial, budgetary, operational and property control and the results of audits and inspections made;
- VIII. in case of illegal expenses or irregular accounts, apply to the responsible parties the sanctions provided by law, which shall establish, among other comminations, a fine proportional to the damages caused to the public treasury;
- IX. determine a period of time for the agency or entity to take the necessary steps for the strict compliance with the law, if an illegality is established;
- X. if not heeded, stop the execution of the impugned act, notifying the Chamber of Deputies and the Federal Senate of such decision;

- XI. present a formal charge to the competent Power on any irregularities or abuses verified.

Paragraph 1 - In the case of a contract, the restraining act shall be adopted directly by the National Congress, which shall immediately request the Executive Power to take the applicable measures.

Paragraph 2 - If the National Congress or the Executive Power, within ninety days, do not take the measures provided for in the preceding paragraph. the Court shall decide on the matter.

Paragraph 3 - Decisions of the Court resulting in the imposition of a debt or fine shall have the effectiveness of an execution instrument.

Paragraph 4 - The Court shall, quarterly and annually, forward to the National Congress a report on its activities.

**Article 72.** In view of indications of unauthorized expenditure, even if in the form of non-programmed investments or non-approved subsidies, the permanent joint Committee referred to in article 166, paragraph 1, may request the responsible Government authority to render the necessary explanation, within five days.

Paragraph 1 - If the explanations are not rendered or are considered insufficient, the Committee shall request the Court to make a conclusive statement on the matter within thirty days.

Paragraph 2 - If the Court deems the expense to be irregular, the Committee shall, if it considers that the expenditure may cause irreparable damage or serious injury to the public economy, propose to the National Congress that it be suspended.

**Article 73.** The Court of Accounts of the Union, formed by nine Justices, shall have its seat in the Federal District, its own staff and jurisdiction throughout the national territory, and shall exercise, insofar as pertinent, the incumbencies provided for in article 96.

Paragraph 1. The Justices of the Court of Accounts of the Union shall be appointed from among Brazilians who meet the following requirements:

- I. more than thirty-five and less than sixty-five years of age;
- II. moral integrity and spotless reputation;
- III. notable knowledge of the law, accounting, economics and finances or of public administration;
- IV. more than ten years of exercise of office or of actual professional activity which requires the knowledge mentioned in the preceding item.

Paragraph 2 - The Justices of the Court of Accounts of the Union shall be chosen:

- I. one-third by the President of the Republic with the approval of the Federal Senate, two of them being alternately chosen from among auditors and members of the Public Prosecution at the Court, as indicated in a triple list by the Court, in accordance with criteria of seniority and merit:

II. two-thirds by the National Congress.

Paragraph 3 - The Justices of the Court of Accounts of the Union shall have the same guarantees, prerogatives, impediments, remuneration and advantages as the Justices of the Superior Court of Justice and may only retire with the advantages of the office if they have actually held it for more than five years.

Paragraph 4 - The auditor, when substituting for a Justice, shall have the same guarantees and impediments as the incumbent Justice, and, when in exercise of the other duties of the judicature, those of a Judge of a Federal Regional Court.

**Article 74.** The Legislative, Executive and Judicial Powers shall maintain an integrated system of internal control for the purpose of:

- I. evaluating the attainment of the goals established in the pluriannual plan, the implementation of government programmes and of the budgets of the Union;
- II. verifying the lawfulness and evaluating the results, as to effectiveness and efficiency, of the budgetary, financial and property management in the agencies and entities of the federal administration, as well as the use of public funds by private legal entities;
- III. exercising control over credit transactions, collateral signatures and guarantees, as well as over the rights and assets of the Union,
- IV. supporting external control in the exercise of its institutional mission.

Paragraph 1. The persons responsible for internal control shall, upon learning of any irregularity or illegality, inform the Court of Accounts of the Union about it, subject to joint liability.

Paragraph 2 - Any citizen, political party, association or labour union has standing under the law to denounce irregularities or illegalities to the Court of Accounts of the Union.

**Article 75.** The rules set forth in this section shall apply, where appropriate, to the organization, composition and control of the Court of Accounts of the states and of the Federal District, as well as the Courts and Councils of Accounts of the municipalities.

Sole paragraph - The state Constitutions shall provide for the respective Courts of Accounts, which shall be formed by seven council members.

## **CHAPTER II - THE EXECUTIVE POWER**

### **SECTION I - THE PRESIDENT AND THE VICE PRESIDENT OF THE REPUBLIC**

**Article 76.** The Executive Power is exercised by the President of the Republic, assisted by the Ministers of State.

***\*Article 77.** The election of the President and Vice-President of the Republic shall take place simultaneously, on the first Sunday of October, in the first round, and on the last Sunday of October, in the second round, as the case may be, of the year preceding the one in which the current presidential term of office ends.*

Paragraph 1. The election of the President of the Republic shall imply the election of the Vice-President registered with him.

Paragraph 2 - The candidate who, being registered by a political party, obtains an absolute majority of votes, not counting blank or void votes, shall be considered elected President.

Paragraph 3 - If no candidate attains an absolute majority in the first voting, another election shall be held within twenty days from the announcement of the results, the competition being between the two candidates with the highest number of votes, and being considered elected the candidate with the majority of valid votes.

Paragraph 4 - Should one of the candidates, before the second round of voting is held, die, withdraw or become legally impaired, the candidate with the highest number of votes among the remaining candidates shall be called.

Paragraph 5 - If in the event of the preceding paragraphs, more than one candidate with an equal number of votes remain in second place, the eldest one shall qualify.

**Article 78.** The President and the Vice-President of the Republic shall take office in a session of the National Congress, pledging to maintain, defend and carry out the Constitution, obey the laws, promote the general well-being of the Brazilian people, sustain the union, the integrity and the independence of Brazil.

Sole paragraph - In the event that, after ten days from the date scheduled for the inauguration, the President or the Vice-President, except by reason of *force majeure* has not taken office. the office shall be declared vacant.

**Article 79.** The Vice-President shall replace the President in the event of impediment and shall succeed him in the event of vacancy.

Sole paragraph - In addition to other duties attributed to him by a supplementary law, the Vice-President shall assist the President whenever summoned by him for special missions.

**Article 80.** In the event of impediment of the President and of the Vice- President or of vacancy of the respective offices, the President of the Chamber of Deputies, the President of the Senate and the Chief Justice of the Supreme Federal Court shall be called successively to exercise the Presidency.

**Article 81.** In the event of vacancy of the offices of President and Vice-President of the Republic, elections shall be held ninety days after the occurrence of the last vacancy.

Paragraph 1 - If the vacancy occurs during the last two years of the President's term of office, the National Congress shall hold elections for both offices thirty days after the last vacancy. as established by law.

Paragraph 2 - In any of the cases, those elected shall complete the term of office of their predecessors.

**\*Article 82.** *The term of office of the President of the Republic is four years, and it shall commence on January 1 of the year following the year of his election.*

**Article 83.** The President and the Vice-President of the Republic may not, without authorization from the National Congress, leave the country for a period of more than fifteen days, subject to loss of office.

## **SECTION II - DUTIES OF THE PRESIDENT OF THE REPUBLIC**

**Article 84.** The President of the Republic shall have the exclusive power to:

- I. appoint and dismiss the Ministers of State;
- II. exercise, with the assistance of the Ministers of State, the higher management of the federal administration;
- III. start the legislative procedure, in the manner and in the cases set forth in this Constitution;
- IV. sanction, promulgate and order the publication of laws, as well as to issue decrees and regulations for the true enforcement thereof;
- V. veto bills, wholly or in part;
- VI. provide for the organization and operation of the federal administration, as established by law;
- VII. maintain relations with foreign States and to accredit their diplomatic representatives;
- VIII. conclude international treaties, conventions and acts, ad referendum of the National Congress;
- IX. decree the state of defense and the state of siege;
- X. decree and enforce federal intervention;
- XI. upon the opening of the legislative session, send a government message and plan to the National Congress, describing the state of the nation and requesting the actions he deems necessary;
- XII. grant pardons and reduce sentences, after hearing the entities instituted by law, if necessary;
- XIII. exercise the supreme command of the Armed Forces, to promote general officers and to appoint them to the offices held exclusively by them;
- XIV. appoint, after approval by the Senate, the Justices of the Supreme Federal Court and those of the superior courts, the Governors of the territories, the Attorney-General of the Republic, the President and the Directors of the Central Bank and other civil servants, when established by law;
- XV. appoint, with due regard for the provisions of article 73, the Justices of the Federal Court of Accounts;
- XVI. appoint judges in the events established by this Constitution and the Advocate-General of the Union;
- XVII. appoint members of the Council of the Republic, in accordance with article 89, VII;
- XVIII. call and preside over the Council of the Republic and the National Defense Council;
- XIX. declare war, in the event of foreign aggression, authorized by the National Congress or confirmed by it, whenever it occurs between legislative sessions and, under the same conditions, to decree full or partial national mobilization
- XX. make peace, authorized or confirmed by the National Congress;

- XXI. award decorations and honorary distinctions;
- XXII. permit, in the cases set forth by supplementary law, foreign forces to pass through the national territory, or to remain temporarily therein;
- XXIII. submit to the National Congress the pluriannual plan, the bill of budgetary directives and the budget proposals set forth in this Constitution;
- XXIV. render, each year, accounts to the National Congress concerning the previous fiscal year, within sixty days of the opening of the legislative session;
- XXV. fill and abolish federal government positions, as set forth by law;
- XXVI. issue provisional measures, with force of law, according to article 62:
- XXVII. perform other duties set forth in this Constitution.

Sole paragraph - The President of the Republic may delegate the duties mentioned in items VI, XII and XXV, first part, to the Ministers of State, to the Attorney-General of the Republic or to the Advocate-General of the Union, who shall observe the limitations established in the respective delegations.

### **SECTION III - LIABILITY OF THE PRESIDENT OF THE REPUBLIC**

**Article 85.** Those acts of the President of the Republic which attempt on the Federal Constitution and especially on the following, are crimes of malversation:

- I. the existence of the Union;
- II. the free exercise of the Legislative Power, the Judicial Power, the Public Prosecution and the constitutional Powers of the units of the Federation;
- III. the exercise of political, individual and social rights;
- IV. the internal security of the country;
- V. probity in the administration;
- VI. the budgetary law;
- VII. compliance with the laws and with court decisions.

Sole paragraph - These crimes shall be defined in a special law, which shall establish the rules of procedure and trial.

**Article 86.** If charges against the President of the Republic are accepted by two-thirds of the Chamber of Deputies, he shall be submitted to trial before the Supreme Federal Court for common criminal offenses or before the Federal Senate for crimes of malversation.

Paragraph 1 - The President shall be suspended from his functions:

- I. in common criminal offenses, if the accusation or the complaint is received by the Federal Supreme Court;
- II. in the event of crimes of malversation, after the proceeding is instituted by the Federal Senate.

Paragraph 2 - If, after a period of one hundred and eighty days, the trial has not been concluded, the suspension of the President shall cease without prejudice to the normal progress of the proceeding.

Paragraph 3 - In the event of common offenses, the President of the Republic shall not be subject to arrest as long as no sentence is rendered.

Paragraph 4 - During his term of office, the President of the Republic may not be held liable to acts outside the performance of his functions.

## **SECTION IV - THE MINISTERS OF STATE**

**Article 87.** The Ministers of State shall be chosen from among Brazilians over twenty-one years of age and in possession of their political rights.

Sole paragraph - The Minister of State, in addition to other duties established in this Constitution and in the law, has the power to:

- I. exercise guidance, coordination and supervision of the agencies and entities of the federal administration in the area of his authority and to countersign acts and decrees signed by the President of the Republic;
- II. issue instructions for the enforcement of laws, decrees and regulations;
- III. submit to the President of the Republic an annual report on his administration of the Ministry.
- IV. perform the acts pertinent to the duties assigned or delegated to him by the President of the Republic.

**Article 88.** The law shall provide for the creation, structuring and duties of the Ministries.

## **SECTION V - THE COUNCIL OF THE REPUBLIC AND THE NATIONAL DEFENSE COUNCIL**

### **SUBSECTION I - THE COUNCIL OF THE REPUBLIC**

**Article 89.** The Council of the Republic is a higher body for consultation by the President of the Republic, and its members are:

- I. the Vice-President of the Republic;
- II. the President of the Chamber of Deputies;
- III. the President of the Federal Senate;
- IV. the majority and the minority leaders in the Chamber of Deputies;
- V. the majority and the minority leaders in the Federal Senate;
- VI. the Minister of Justice;
- VII. six born Brazilian citizens, with over thirty-five years of age, two of which appointed by the President of the Republic, two elected by the Federal Senate and two elected by the Chamber of Deputies, all with a term of office of three years, the re-appointment being prohibited.

**Article 90.** The Council of the Republic has the competence to express opinion on:

- I. federal intervention, state of defense and state of siege;
- II. matters relevant to the stability of the democratic institutions.

Paragraph 1. The President of the Republic may call a State Minister to participate in the Council meeting, when the agenda includes a matter related to the respective Ministry.

Paragraph 2 - The organization and operation of the Council of the Republic shall be regulated by law.

## **SUBSECTION II - THE NATIONAL DEFENSE COUNCIL**

**Article 91.** The National Defense Council is a consultation body of the President of the Republic on matters related to national sovereignty and the defense of the democratic state, and the following participate in it as natural members:

- I. the Vice-President of the Republic;
- II. the President of the Chamber of Deputies;
- III. the President of the Federal Senate;
- IV. the Minister of Justice;
- V. the military Ministers;
- VI. the Minister of External Relations;
- VII. the Minister of Planning.

Paragraph 1 - It is the competence of the National Defense Council:

- I. to express opinion in the event of declaration of war and making of peace, as established in this Constitution;
- II. to express opinion on the decreeing of state of defense, state of siege and federal intervention;
- III. to propose the criteria and conditions for the use of areas which are indispensable to the security of the national territory and to express opinion on their actual use, especially on the boundary zone and on those related to the preservation and exploitation of natural resources of any kind;
- IV. to study, propose and monitor the development of initiatives required to guarantee national independence and the defense of the democratic state.

Paragraph 2 - The organization and the operation of the National Defense Council shall be regulated by law.

## **CHAPTER III - THE JUDICIAL POWER**

### **SECTION I GENERAL PROVISIONS**

**Article 92.** The following are the bodies of the Judicial Power:

- I. the Supreme Federal Court;
- II. the Superior Court of Justice;
- III. the Federal Regional Courts and the Federal Judges;
- IV. the Labour Courts and Judges;
- V. the Electoral Courts and Judges;
- VI. the Military Courts and Judges;
- VII. the Courts and Judges of the states, of the Federal District and of the territories.

Sole paragraph - The Supreme Federal Court and the Superior Courts have their seat in the Federal Capital and their jurisdiction over the entire Brazilian territory.

**Article 93.** A supplementary law, proposed by the Supreme Federal Court, shall provide for the Statute of the Judiciary, observing the following principles:

- I. admission into the career, with the initial post of substitute judge, by means of a civil service entrance examination of tests and presentation of academic and professional credentials, with the participation of the Brazilian Bar Association in all phases, obeying the order of classification for appointments;
- II. promotion from level to level, based on seniority and merit. alternately, observing the following rules:
  - a. the promotion of a judge who has appeared in a merit list for three consecutive times or for five alternate times is mandatory;
  - b. merit promotion requires two years in office in the respective level and that the judge should appear in the top fifth part of the seniority list of such level, unless no one satisfying such requirements is willing to accept the vacant post;
  - c. appraisal of merit according to the criteria of promptness and reliability in the exercise of the jurisdictional function and according to attendance and achievement in recognized improvement courses.
  - d. in determining seniority, the court may only reject the judge with the longest service by the vote of two-thirds of its members, according to a specific procedure, the voting being repeated until the selection is determined;
- III. access to the courts of second instance shall obey seniority and merit, alternately, as determined at the last level, or if existing, at the Court of Appeals, in the case of promotion to the Court of Justice, in accordance with item II and the candidate's class of origin;
- IV. provision of official courses for preparation and improvement of judges as requisites for admission and promotion in their careers;
- V. the remuneration of judges shall be established with a difference of not more than ten per cent from one to another career category, and under no circumstances may such remuneration exceed that of the Justices of the Supreme Federal Court;
- VI. retirement with full pay is compulsory upon disability or at seventy years of age, and optional after thirty years of service, after five years of effective activity in the judiciary;
- VII. a permanent judge shall reside in the respective judicial district;
- VIII. the acts of removal, of placement on paid availability and of retirement of a judge, for public interest, shall be based on a decision by the vote of two-thirds of the respective court, full defense being ensured;
- IX. all judgements of the bodies of the Judiciary shall be public, and all decisions shall be justified, under penalty of nullity, and the law may, if the public interest so requires, limit attendance in given acts to the interested parties and their lawyers, or only to the latter;
- X. the administrative decisions of the courts shall be supported by a recital, and disciplinary decisions shall be taken by the vote of the absolute majority of their members;
- XI. in courts with more than twenty-five judges, a special body may be constituted, with a minimum of eleven and a maximum of twenty-five members to exercise the administrative and jurisdictional duties which are under the powers of the full court.

**Article 94.** One-fifth of the seats of the Federal Regional Courts, of the Courts of the States, and of the Federal District and the Territories shall be occupied by members of the Public Prosecution, with over ten years of office, and by lawyers of notable juridical

learning and spotless reputation, with over ten years of effective professional activity, nominated in a list of six names by the entities representing the respective classes.

Sole paragraph - Upon receiving the nominations, the court shall organize a list of three names and shall send it to the Executive Power, which shall, within the subsequent twenty days, select one of the listed names for appointment.

**Article 95.** Judges enjoy the following guarantees:

- I. life tenure, which, at first instance, shall only be acquired after two years in office, loss of office being dependent, during this period, on deliberation of the court to which the judge is subject, and, in other cases, on a final and unappealable judicial decision;
- II. irremovability, save for reason of public interest, under the terms of article 93, VIII;
- III. irreducibility of pay, observing, as regards remuneration, the provisions of articles 37, XI, 150, II, 153, III, and 153, paragraph 2, I.

Sole paragraph - Judges are forbidden to:

- I. hold, even when on paid availability, another office or position, except for a teaching position;
- II. receive, on any account or for any reason, court costs or participation in a lawsuit;
- III. engage in political or party activities.

**Article 96.** It is of the exclusive competence of:

- I. the courts:
  - a. to elect their directive bodies and to draw up their internal regulations, in compliance with the rules of proceedings and the procedural guarantees of the parties, and regulating the competence and the operation of the respective jurisdictional and administrative bodies;
  - b. to organize their secretariats and auxiliary services, as well as those of the tribunals connected with them, guaranteeing the exercise of the respective inspection activities;
  - c. to fill, under the terms of this Constitution, offices of career judges within their respective jurisdiction;
  - d. to propose the creation of new courts of first instance;
  - e. to fill, by means of a civil service entrance examination of tests, or of tests and presentation of academic and professional credentials according to the provisions of article 169, sole paragraph, the offices required for the administration of justice, except for the positions of trust as defined in law;
  - f. to grant leave, vacations and other absences to their members and to the judges and employees who are immediately subordinated to them;
- II. the Supreme Federal Court, the Superior Courts and the Courts of Justice, to propose to the respective Legislative Power, with due regard for the provisions of article 169:
  - a. alteration in the number of members of the lower courts;
  - b. creation and extinction of offices and establishment of pay for their members, for the judges, including those of the lower courts, if existing, for the auxiliary services and for the courts connected with them;

- c. creation or extinction of inferior courts;
  - d. alteration of the judicial organization and division;
- III. the Courts of Justice, to try judges of the states, of the Federal District and of the Territories, as well as members of the Public Prosecution, for common crimes and crimes of malversation, except in those cases within the competency of the Electoral Code.

**Article 97.** The courts may declare a law or a normative act of the Government unconstitutional only by the vote of the absolute majority of their members or of the members of the respective special body.

**Article 98.** The Union, in the Federal District and in the territories, and the states shall create:

- I. special courts, filled by togated judges, or by togated and lay judges, with powers for conciliation, judgement and execution of civil suits of lesser complexity and criminal offenses of lower offensive potential, by oral and summary proceedings, allowing, in the cases established in law, the settlement and judgement of appeals by panels of judges of first instance;
- II. remunerated justice of peace, formed by citizens elected by direct, universal and secret vote, with a term of office of four years and competence to, under the terms of the law, perform marriages, examine qualification proceedings, ex officio or in view of the presentation of a challenge, and exercise conciliatory functions, of a nonjurisdictional nature, besides others established by law.

**Article 99.** The Judicial Power is ensured of administrative and financial autonomy.

Paragraph 1 - The courts shall prepare their budget proposals, within theca limits stipulated jointly with the other Powers in the law of budgetary directives.

Paragraph 2 - The proposal shall, after hearing the other interested courts, be forwarded.

- I. at the federal level, by the presidents of the Supreme Federal Court and of the Superior Courts, with the approval of the respective courts;
- II. at the level of the states and of the Federal District and the territories, by the presidents of the Courts of Justice, with the approval of the respective courts.

**Article 100.** With the exception of alimony credits, payments owed by the Federal, state or municipal treasuries, by virtue of a court decision, shall be made exclusively in chronological order of presentation of judicial requests and charged to the respective credits, it being forbidden to designate cases or persons in the budgetary appropriations and in the additional credits opened for such purpose.

Paragraph 1 - It is mandatory for the budgets of public entities to include the funds required for the payment of debts shown on the judicial requests presented until or on July 1, on which date their values shall be adjusted, and the payment shall be made before the end of the following fiscal year.

Paragraph 2 - The budgetary allocations and the credits opened shall be assigned to the Judicial Power, and the respective amounts shall be distributed to the competent

departments, it being within the competence of the President of the Court which rendered the decision of execution to determine payment, according to the possibilities of the deposit, and to authorize, upon petition of a creditor and exclusively in the event that his right of precedence is not respected, seizure of the amount required to satisfy the debt.

## SECTION II - THE SUPREME FEDERAL COURT

**Article 101.** The Supreme Federal Court is composed of eleven Justices, chosen from among citizens over thirty-five and under sixty-five years of age, of notable juridical learning and spotless reputation.

Sole paragraph - The Justices of the Supreme Federal Court shall be appointed by the President of the Republic, after their nomination has been approved by the absolute majority of the Federal Senate.

**Article 102.** The Supreme Federal Court is responsible, essentially, for safeguarding the Constitution, and it is within its competence:

- I. to institute legal proceeding and trial, in the first instance, of:
  - a. direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act;
  - b. in common criminal offenses, the President of the Republic, the Vice-President, the members of the National Congress, its own Justices and the Attorney-General of the Republic;
  - c. in common criminal offenses and crimes of malversation, the Ministers of State, except as provided in article 52, I, the members of the Superior Courts, those of the Federal Court of Accounts and the heads of permanent diplomatic missions;
  - d. *habeas corpus*, when the petitioner is any one of the persons referred to in the preceding subitems; the writ of mandamus and *habeas data* against acts of the President of the Republic, of the Directing Boards of the Chamber of Deputies and of the Federal Senate, of the Federal Court of Accounts, of the Attorney-General of the Republic and of the Supreme Federal Court itself;
  - e. litigation between a foreign State or an international organization and the Union, a state, the Federal District or a territory;
  - f. disputes and conflicts between the Union and the states, the Union and the Federal District, or between one another, including the respective indirect administration bodies;
  - g. extradition requested by a foreign state;
  - h. homologation of foreign court decisions and the granting of *exequatur* to letters rogatory which may be conferred by its internal regulations upon its President;
  - i. *habeas corpus*, when the constraining party or the petitioner is a court, authority or employee whose acts are directly subject to the jurisdiction of the Supreme Federal Court, or in the case of a crime, subject to the same jurisdiction in one sole instance;
  - j. criminal review of and rescissory action against its decisions;

- k. claims for the preservation of its powers and guarantee of the authority of its decisions;
- l. enforcement of court decisions in the cases where it has original competence, the delegation of duties to perform procedural acts being allowed;
- m. a suit in which all members of the judicature are directly or indirectly involved, and a suit in which more than half of the members of the court of origin are disqualified or have a direct or indirect interest;
- n. conflicts of powers between the Superior Court of Justice and any other courts, between Superior Courts, or between the latter and any other court;
- o. petitions of provisional remedy in direct actions of unconstitutionality;
- p. writs of injunction, when drawing up of the regulation is the responsibility of the President of the Republic, of the National Congress, of the Chamber of Deputies, of the Federal Senate, of the Directing Boards of one of these legislative houses, of the Federal Court of Accounts, of one of the Superior Courts, or of the Supreme Federal Court itself;
- II. to judge on ordinary appeal:
  - a. *habeas corpus*, writs of mandamus, habeas data and writs of injunction decided in a sole instance by the Superior Courts, in the event of a denial;
  - b. political crimes;
- III. to judge, on extraordinary appeal, cases decided in a sole or last instance, when the decision appealed:
  - a. is contrary to a provision of this Constitution;
  - b. declares a treaty or a federal law unconstitutional;
  - c. considers valid a law or act of a local government contested in the light of this Constitution.

Paragraph 1. A claim of non-compliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law.

Paragraph 2 - Final decisions on judgments, pronounced by the Supreme Federal Court, in declaratory actions of constitutionality of a federal law or normative act, shall have force against all, as well as a binding effect, as regards the other bodies of the Judicial Power, as well as the Executive Power.

**Article 103.** The following may file an action of unconstitutionality:

- I. the President of the Republic;
- II. the Directing Board of the Federal Senate;
- III. the Directing Board of the Chamber of Deputies;
- IV. the Directing Board of a State Legislative Assembly;
- V. a State Governor;
- VI. the Attorney-General of the Republic;
- VII. the Federal Council of the Brazilian Bar Association;
- VIII. a political party represented in the National Congress;
- IX. a confederation of labour unions or a professional association of a nationwide nature.

Paragraph 1 - The Attorney-General of the Republic shall be previously heard in actions of unconstitutionality and in all suits under the power of the Supreme Federal Court.

Paragraph 2 - When unconstitutionality is declared on account of lack of a measure to render a constitutional provision effective, the competent Power shall be notified for the adoption of the necessary actions and, in the case of an administrative body, to do so within thirty days.

Paragraph 3 - When the Supreme Federal Court examines the unconstitutionality in abstract of a legal provision or normative act, it shall first summon the Advocate-General of the Union, who shall defend the impugned act or text.

Paragraph 4 - A declaratory action of constitutionality may be filed by the President of the Republic, the Directing Board of the Federal Senate, the Directing Board of the Chamber of Deputies or by the Attorney-General of the Republic.

### **SECTION III - THE SUPERIOR COURT OF JUSTICE**

**Article 104.** The Superior Court of Justice is composed of a minimum of thirty- three Justices.

Sole paragraph - The Justices of the Superior Court of Justice shall be appointed by the President of the Republic, chosen from among Brazilians over thirty-five and under sixty-five years of age, of notable juridical learning and spotless reputation, after the nomination has been approved by the Federal Senate, as follows:

- I. one-third shall be chosen from among judges of the Federal Regional Courts and one-third from among judges of the Courts of Justice, nominated in a list of three names prepared by the Court itself;
- II. one-third, in equal parts, shall be chosen from among lawyers and members of the Federal Public Prosecution, the Public Prosecution of the states, the Public Prosecution of the Federal District and the Territories, alternately, nominated under the terms of article 94.

**Article 105.** The Superior Court of Justice has the competence to:

- I. institute legal proceeding and trial, in the first instance, of:
  - a. in common crimes, the Governors of the states and of the Federal District, and, in such crimes and in crimes of malversation, the judges of the Courts of Justice of the states and of the Federal District, the members of the Courts of Accounts of the states and of the Federal District, those of the Federal Regional Courts, of the Regional Electoral and Labour Courts, the members of Councils or Courts of Accounts of the municipalities and the members of the Public Prosecution of the Union who act before court;
  - b. writs of mandamus and habeas data against an act of a Minister of State or of the Court itself;
  - c. *habeas corpus*, when the constraining party or the petitioner is any of the persons mentioned in subitem a, or when the constraining party is a Minister of State, except for the competence of the Electoral Courts;
  - d. conflicts of competence between any courts, except as provided in article 102, I, o, as well as between a court and the judges not subject to it and between judges subject to different courts;

- e. criminal review of and the rescissory actions against its decisions;
  - f. claims for the preservation of its competence and guarantee of the authority of its decisions;
  - g. conflicts of duties between administrative and judicial authorities of the Union, or between judicial authorities of one state and administrative authorities of another or of the Federal District, or between those of the latter and those of the Union;
  - h. writs of injunction, when the drawing up of a regulation is the responsibility of a federal body, entity, or authority, of the direct or indirect administration X h the exceptional of the cases within the competence of the Supreme Federal Court and of the bodies of the Military Justice, of the Electoral Justice, of the Labour Justice and of the Federal Justice:
- II. judge, on ordinary appeal:
    - a. *habeas corpus* decided in a sole or last instance by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, in the event of a denial;
    - b. writs of mandamus decided in a sole instance by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, in the event of a denial;
    - c. cases in which the parties are a foreign state or international organization, on the one part, and a municipality or a person residing or domiciled in the country, on the other part;
  - III. judge, on special appeal, the cases decided, in a sole or last instance. by the Federal Regional Courts or by the courts of the states, of the Federal District and the Territories, when the decision appealed:
    - a. is contrary to a treaty or a federal law, or denies it effectiveness;
    - b. considers valid a law or act of a local government contested in the light of a federal law;
    - c. confers upon a federal law an interpretation different from that which has been conferred upon it by another court.

Sole paragraph - The Council of Federal Justice shall operate at the Superior Court of Justice, and it shall, under the terms of the law, exercise administrative and budgetary supervision over the Federal Courts of first and second instances.

#### **SECTION IV - THE FEDERAL REGIONAL COURTS AND THE FEDERAL JUDGES**

**Article 106.** The following are the bodies of Federal Justice:

- I. the Federal Regional Courts;
- II. the Federal Judges.

**Article 107.** The Federal Regional Courts are composed of a minimum of seven judges, selected, whenever possible, in the respective region and nominated by the President of the Republic from among Brazilians over thirty and under sixty-five years of age, as follows:

- I. one-fifth shall be chosen from among lawyers effectively practicing their professional act for more than ten years and from among members of the Federal Public Prosecution. with over ten years of service;

- II. the others, by means of promotion of federal judges with over five years in office, for seniority and merit, alternatively.

Sole paragraph - A law shall regulate the removal or exchange of judges of the Federal Regional Courts and shall determine their jurisdiction and seat.

**Article 108.** The Federal Regional Courts have the competence to:

- I. institute legal proceeding and trial, in the first instance, of:
  - a. federal judges within the area of their jurisdiction, including those of the Military and Labour Courts, in common crimes and crimes of malversation, and the members of the Public Prosecution of the Union, except for the competence of the Electoral Courts;
  - b. criminal reviews and the rescissory actions against their decisions or decisions of the federal judges of the region;
  - c. writs of mandamus and habeas data against an act of the Court itself or of a federal judge;
  - d. *habeas corpus*, when the constraining authority is a federal judge;
  - e. conflicts of competence between federal judges subject to the Court;
- II. judge, at the level of appeal, cases decided by federal judges and by state judges in the exercise of the federal competence within the area of their jurisdiction.

**Article 109.** The federal judges have the competence to institute legal proceeding and trial of:

- I. cases in which the Union, an autonomous government agency or a federal public company have an interest as plaintiffs, defendants, privies or interveners, with the exception of cases of bankruptcy, of job-related accidents, and of those subject to the Electoral and Labour Courts;
- II. cases between a foreign state or international organization and a municipality or a person domiciled or residing in the country;
- III. cases based on a treaty or a contract between the Union and a foreign State or international organization;
- IV. political crimes and criminal offenses committed against the assets, services or an interest of the Union or of its autonomous agencies or public companies, excluding misdemeanours and excepting the competence of the Military and Electoral Courts;
- V. crimes covered by an international treaty or convention, when, the indirect administration of the cases within the prosecution having started in the country, the result has taken place or should have taken place abroad, or conversely;
- VI. *habeas corpus*, in criminal matters within their competence or when the coercion is exercised by an authority whose acts are not directly subject to another jurisdiction;
- VII. writs of mandamus and habeas data against an act of a federal authority, except for the cases within the competence of the federal courts;
- VIII. crimes committed aboard ships or aircrafts, excepting the competence of the Military Courts;
- IX. crimes or irregular entry or stay of a foreigner, execution of letters rogatory, after exequatur, and of foreign court decisions, after homologation. eases related to nationality, including the respective option, and to naturalization;
- X. disputes over the rights of Indians.

Paragraph 1 - Cases in which the Union is the plaintiff shall be instituted in the judicial section where the other party is domiciled.

Paragraph 2 - Cases brought against the Union may be instituted in the judicial section where the plaintiffs domiciled, or where the act or fact giving rise to the suit occurred or where the item is located, or further, in the Federal District.

Paragraph 3 - Cases in which the parties are a social security institution and its beneficiary shall undergo legal proceeding and trial in the state courts, in the forum of the domicile of the beneficiaries or insured participants, whenever the district is not the seat of a federal court of first instance, in which case the law may allow other cases to be also processed and judged by the state courts.

Paragraph 4 - In the event of the preceding paragraph, the appropriate appeal shall always be taken to the Federal Regional Court within the area of jurisdiction of a judge of first instance.

**Article 110.** Each state, as well as the Federal District, shall be a judicial session, which shall have its seat in the respective capital, and there shall be courts of first instance located where established in law.

Sole paragraph - In the Federal Territories, the jurisdiction and duties attributed to federal judges shall be within the competence of the judges of the local justice. under the terms of the law.

## **SECTION V - LABOUR COURTS AND JUDGES**

**Article 111.** The following are the bodies of Labour Justice:

- I. the Superior Labour Court;
- II. the Regional Labour Courts;
- III. the Boards of Conciliation and Judgement.

Paragraph 1 - The Superior Labour Court shall be composed. of twenty- seven Justices, chosen from among Brazilians over thirty-five and under sixty- five years of age, appointed by the President of the Republic after approval by the Federal Senate, as follows:

- I. seventeen tenured togated judges, of which eleven shall be chosen from among career labour judges, three from among lawyers and three from among members of the Labour Public Prosecution;
- II. ten temporary judges, representing professional categories, with parity of representation of employees and employers.

Paragraph 2 - The Court shall forward lists of three names to the President of the Republic, observing, as regards the vacancies intended for lawyers and for members of the Public Prosecution, the provisions of article 94, and, as regards temporary judges, the result of the appointment by an electoral college composed of the boards of directors of the national confederations of workers or employers, as the case may be; the lists of three

names for the filling of the offices intended for career labour judges shall be prepared by the tenured togated Justices.

Paragraph 3 - The law shall make provisions for the powers of the Superior Labour Court.

**Article 112.** There shall be at least one Regional Labour Court in each state and in the Federal District, and the law shall institute the Boards of Conciliation and Judgement, allowing, in districts where such boards are not instituted, for the attribution of their jurisdiction to judges.

**Article 113.** The law shall regulate the constitution, installation, jurisdiction, powers, guarantees and conditions of exercise of the bodies of Labour Justice, preserving the parity of representation of workers and employers.

**Article 114.** The Labour Justice has the power to conciliate and judge individual and collective disputes between workers and employers, comprising entities of public international law and of the direct and indirect public administration of the municipalities, of the Federal District, of the states and of the Union, and, under the terms of the law, other disagreements arising from labour relations, as well as litigations which originate in the compliance with its own decisions, including those of a collective nature.

Paragraph 1 - If collective negotiations are unsuccessful, the parties may elect arbitrators.

Paragraph 2 - If any of the parties refuses negotiation or arbitration, the respective unions may file a collective labour suit, and Labour Courts may establish regulations and conditions, respecting the minimum conventional and legal provisions for the protection of labour.

**Article 115.** The Regional Labour Courts shall be composed of judges appointed by the President of the Republic, two-thirds of which shall be tenured togated judges and one-third shall be temporary judges representing professional categories, observing, among togated judges, the proportions established in article 111, Paragraph 1, I.

Sole paragraph - The judges of the Regional Labour Courts shall be:

- I. labour judges, chosen by promotion, alternately, for seniority and merit:
- II. lawyers and members of the Labour Public Prosecution, observing the provisions of article 94;
- III. temporary judges nominated in lists of three names by the boards of direction of the federations and labour unions having their territorial base in the region.

**Article 116.** A Board of Conciliation and Judgement shall be composed of a labour judge, who shall preside over it, and of two temporary judges representing employees and employers.

Sole paragraph - The temporary judges of the Boards of Conciliation and Judgement shall be appointed by the President of the Regional Labour Court, under the terms of the law, with one renomination being allowed.

**Article 117.** The term of office of the temporary judges in all instances is three years.

Sole paragraph - The temporary judges shall have substitutes.

## **SECTION VI - ELECTORAL COURTS AND JUDGES**

**Article 118.** The following are the bodies of Electoral Justice:

- I. the Superior Electoral Court;
- II. the Regional Electoral Courts;
- III. the Electoral Judges;
- IV. the Electoral Boards.

**Article 119.** The Superior Electoral Court shall be composed of a minimum of seven members chosen,

- I. through election, by secret vote:
  - a. three judges from among the Justices of the Supreme Federal Court;
  - b. two judges from among the Justices of the Superior Court of Justice;
- II. through appointment by the President of the Republic, two judges from among six lawyers of notable juridical learning and good moral repute, nominated by the Supreme Federal Court.

Sole paragraph - The Superior Electoral Court shall elect its President and Vice-President from among the Justices of the Supreme Federal Court, and its Electoral Corregidor from among the Justices of the Superior Court of Justice.

**Article 120.** There shall be a Regional Electoral Court in the capital of each state and in the Federal District.

Paragraph 1 - The Regional Electoral Courts shall be composed:

- I. through election, by secret vote:
  - a. of two judges chosen from among the judges of the Court of Justice;
  - b. of two judges chosen by the Court of Justice from among court judges;
- II. of a judge of the Federal Regional Court with its seat in the capital of a state or in the Federal District, or, in the absence thereof, of a federal judge chosen in any case by the respective Federal Regional Court;
- III. through appointment by the President of the Republic, of two judges nominated by the Court of Justice from among six lawyers of notable juridical learning and good moral repute.

Paragraph 2 - The Regional Electoral Court shall elect its President and Vice-President from among its judges.

**Article 121.** A supplementary law shall provide for the organization and competence of the electoral courts, judges and boards.

Paragraph 1 - The members of the courts, the court judges and the members of the electoral boards, while in office and insofar as applicable to them, shall enjoy full guarantees and shall be non-removable.

Paragraph 2 - The Judges of the Electoral Courts, except for a justified reason, shall serve for a minimum of two years, and never for more than two consecutive two-year periods, and their substitutes shall be chosen at the same time and through the same procedure, in equal numbers for each category.

Paragraph 3 - The decisions of the Superior Electoral Court are unappealable, save those which are contrary to this Constitution and those denying *habeas corpus* or writs of mandamus.

Paragraph 4 - Decisions of the Regional Electoral Courts may only be appealed against when

- I. they are rendered against an express provision of this Constitution or of a law;
- II. there is a divergence in the interpretation of a law between two or more electoral courts;
- III. they relate to ineligibility or issuance of certificates of electoral victory in federal or state elections;
- IV. they annul certificates of electoral victory or decree the loss of federal or state elective offices
- V. they deny *habeas corpus*, writs of mandamus, *habeas data* or writs of injunction.

## **SECTION VII - MILITARY COURTS AND JUDGES**

**Article 122.** The following are the bodies of Military Justice:

- I. the Superior Military Court;
- II. the Military Courts and Judges instituted by law.

**Article 123.** The Superior Military Court shall be composed of fifteen life Justices, appointed by the President of the Republic, after their nomination has been approved by the Federal Senate, three of which shall be chosen from among General officers of the Navy, four from among General officers of the Army, three from among General officers of the Air Force, all of them in active service and in the highest rank of the career, and five from among civilians.

Sole paragraph - The civil justices shall be chosen by the President of the Republic from among Brazilians over thirty-five years of age, as follows:

- I. three from among lawyers of notable juridical learning and spotless conduct, with over ten years of effective professional activity;
- II. two, by equal choice, from among auditor judges and members of the Public Prosecution of the Military Justice.

**Article 124.** The Military Courts have the competence to carry out legal proceeding and trial of the military crimes defined by law.

Sole paragraph - The law shall make provisions for the organization, operation and competence of the Military Courts.

## **SECTION VIII - COURTS AND JUDGES OF THE STATES**

**Article 125.** The states shall organize their judicial system, observing the principles established in this Constitution.

Paragraph 1 - The competence of the courts shall be defined in the Constitution of the state, and the law of judicial organization shall be the initiative of the Court of Justice.

Paragraph 2 - The states have the competence to institute actions of unconstitutionality of state or municipal laws or normative acts in the light of the Constitution of the state, it being forbidden to attribute legitimation to act to a sole body.

Paragraph 3 - By proposal of the Court of Justice, a state law may create the state Military Justice, constituted, at first instance, by the Councils of Justice and, at second instance, by the Court of Justice itself, or by the Court of Military Justice in those states in which the military police troops count more than twenty thousand members.

Paragraph 4 - The state Military Courts have the competence to institute legal proceeding and trial of military policemen and military firemen for the military crimes defined in law, and the competent court shall decide upon the loss of post or rank of officers and of the grade of servicemen.

**Article 126.** For the settlement of conflicts relating to land property, the Court of Justice shall designate special level judges, with exclusive competence for agrarian matters.

Sole paragraph - Whenever efficient jurisdictional service requires it, the judge shall go personally to the site of the litigation.

## **CHAPTER IV - THE FUNCTIONS ESSENTIAL TO JUSTICE**

### **SECTION I - THE PUBLIC PROSECUTION**

**Article 127.** The Public Prosecution is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests.

Paragraph 1 - Unity, indivisibility and functional independence are institutional principles of the Public Prosecution.

Paragraph 2 - The Public Prosecution is ensured of functional and administrative autonomy, and it may, observing the provisions of article 169, propose to the Legislative Power the creation and extinction of its offices and auxiliary services, filling them through a civil service entrance examination of tests or of tests and presentation of academic and professional credentials; the law shall provide for its organization and operation.

Paragraph 3 - The Public Prosecution shall prepare its budget proposal within the limits established in the law of budgetary directives.

**Article 128.** The Public Prosecution comprises:

- I. the Public Prosecution of the Union, which includes:
  - a. the Federal Public Prosecution;
  - b. the Labour Public Prosecution;
  - c. the Military Public Prosecution;
  - d. the Public Prosecution of the Federal District and the Territories
- II. the Public Prosecutions of the states.

Paragraph 1 - The head of the Public Prosecution of the Union is the Attorney-General of the Republic, appointed by the President of the Republic from among career members over thirty-five years of age, after his name has been approved by the absolute majority of the members of the Federal Senate, for a term of office of two years, reappointment being allowed.

Paragraph 2 - The removal of the Attorney-General of the Republic, on the initiative of the President of the Republic, shall be subject to prior authorization by the absolute majority of the Federal Senate.

Paragraph 3 - The Public Prosecutions of the states, of the Federal District and the Territories shall prepare a list of three names from among career members, under the terms of the respective law, for the selection of their Attorney-General, who shall be appointed by the Head of the Executive Power for a term of office of two years, one reappointment being allowed.

Paragraph 4 - The Attorneys-General in the states, in the Federal District and the Territories may be removed from office by deliberation of the absolute majority of the Legislative Power, under the terms of the respective supplementary law.

Paragraph 5 - Supplementary laws of the Union and of the states, which may be proposed by the respective Attorneys-General, shall establish the organization, the duties and the statute of each Public Prosecution, observing, as regards their members:

- I. the following guarantees:
  - a. life tenure, after two years in office, with loss of office only by a final and unappealable judicial decision;
  - b. irremovability, save for reason of public interest, through decision of the competent collegiate body of the Public Prosecution, by the vote of two-thirds of its members, full defense being ensured;
  - c. irreducibility of pay, observing, as regards the remuneration, the provisions of articles 37, XI, 150, II, 153, III, 153, paragraph 2, I;
- II. the following prohibitions:
  - a. receiving, on any account or for any reason, fees, percentages or court costs;
  - b. practicing the legal profession;
  - c. participating in a commercial company, under the terms of the law.
  - d. exercising, even when on paid availability, any other public function, except for a teaching position;
  - e. engaging in political or party activities, save for the exceptions established in the law.

**Article 129.** The following are institutional functions of the Public Prosecution:

- I. to initiate, exclusively, public criminal prosecution, under the terms of the law;
- II. to ensure effective respect by the Public Authorities and by the services of public relevance for the rights guaranteed in this Constitution, taking the action required to guarantee such rights;
- III. to institute civil investigation and public civil suit to protect public and social property, the environment and other diffuse and collective interests;
- IV. to institute action of unconstitutionality or representation for purposes of intervention by the Union or by the states, in the cases established in this Constitution;
- V. to defend judicially the rights and interests of the Indian populations;
- VI. to issue notifications in administrative procedures within its competence, requesting information and documents to support them, under the terms of the respective supplementary law;
- VII. to exercise external control over police activities, under the terms of the supplementary law mentioned in the previous article:
- VIII. to request investigatory procedures and the institution of police investigation, indicating the legal grounds of its procedural acts;
- IX. to exercise other functions which may be conferred upon it, provided that they are compatible with its purpose, with judicial representation and judicial consultation for public entities being forbidden.

Paragraph 1 - Legitimation by the Public Prosecution for the civil actions set forth in this article shall not preclude those of third parties in the same cases, according to the provisions of this Constitution and of the law

Paragraph 2 - The functions of Public Prosecution may only be exercised by career members, who must reside in the judicial district of their respective assignment.

Paragraph 3 - Admission into the career shall take place by means of a civil service entrance examination of tests and presentation of academic and professional credentials, ensuring participation by the Brazilian Bar Association in such examination, and observing, for appointment, the order of classification.

Paragraph 4 - The provisions of article 93, II and VI shall apply to the Public Prosecution, where appropriate.

**Article 130.** The provisions of this section concerning rights, prohibitions and form of investiture apply to the members of the Public Prosecution before the Courts of Accounts.

## **SECTION II - THE ADVOCACY-GENERAL OF THE UNION**

**Article 131.** The Advocacy-General of the Union is the institution which, either directly or through a subordinated agency, represents the Union judicially or extrajudicially, and it is responsible, under the terms of the supplementary law which provides for its organization and operation, for the activities of judicial consultation and assistance to the Executive Power.

Paragraph 1 - The Advocacy-General of the Union is headed by the Advocate-General of the Union, freely appointed by the President of the Republic from among citizens over thirty-five years of age, of notable juridical learning and spotless reputation.

Paragraph 2 - Admission into the initial classes of the careers of the institution dealt with in this article shall take place by means of a civil service entrance examination of tests and presentation of academic and professional credentials.

Paragraph 3 - In the execution of receivable taxes of a tributary nature, the Union shall be represented by the office of the Attorney-General of the Public Finances, observing the provisions of the law.

**Article 132.** The Prosecutors of the states and of the Federal District shall exercise judicial representation and judicial consultation for their respective federated units, organized in a career, admission into which shall depend on a civil service entrance examination of tests and presentation of academic and professional credentials, observing the provisions of article 135.

### **SECTION III - THE PUBLIC ADVOCACY AND THE PUBLIC LEGAL DEFENSE**

**Article 133.** The lawyer is indispensable to the administration of justice and is inviolable for his acts or manifestations in the exercise of his profession, within the limits of the law.

**Article 134.** The Public Legal Defense is an essential institution to the jurisdictional function of the State and is responsible for the judicial guidance and the defense, in all levels, of the needy, under the terms of article 5, LXXIV.

Sole paragraph - A supplementary law shall organize the Public Legal Defense of the Union, of the Federal District and the Territories and shall prescribe general rules for its organization in the states, into career offices filled, in the initial class, by means of a civil service entrance examination of tests and presentation of academic and professional credentials, with the guarantee of irremovability being ensured to its members and the practice of advocacy beyond the institutional attributions being forbidden.

**Article 135.** The principle of article 37, XII, and article 39, paragraph I apply to the careers regulated in this title.

## **TITLE V - THE DEFENSE OF THE STATE AND OF THE DEMOCRATIC INSTITUTIONS**

### **CHAPTER I - THE STATE OF DEFENSE AND THE STATE OF SIEGE**

#### **SECTION I - THE STATE OF DEFENSE**

**Article 136.** The President of the Republic may, after hearing the Council of the Republic and the National Defense Council, decree a state of defense to preserve or to promptly re-establish, in specific and restricted locations, the public order or the social peace threatened by serious and imminent institutional instability or affected by major natural calamities.

Paragraph 1 - The decree instituting the state of defense shall determine the period of its duration, shall specify the areas to be encompassed and shall indicate, within the terms and limitations of the law, the coercive measures to be in force from among the following:

- I. restrictions to the rights of:
  - a. assembly, even if held within associations;
  - b. secrecy of correspondence;
  - c. secrecy of telegraph and telephone communication;
- II. in the event of a public calamity, occupation and temporary use of public property and services, the Union being liable for the resulting damages and Costs

Paragraph 2 - The state of defense shall not exceed thirty days and it may be extended once for an identical period if the reasons that justified its decreeing persist.

Paragraph 3 - During the period in which the state of defense is in force:

- I. arrest for a crime against the State, determined by the party executing the measure, shall be immediately communicated by such party to the competent judge, who shall remit it if it is illegal, it being the arrested person's choice to request examination of corpus delicti from the police authority;
- II. the communication shall be accompanied by a statement by the authority as to the physical and mental state of the arrested person at the time of the filing of the charges;
- III. the imprisonment or detention of any person shall not exceed ten days, unless authorized by the Judicial Power;
- IV. incommunicability of the arrested person is forbidden.

Paragraph 4 - Upon decreeing a state of defense or extension thereof, the President of the Republic shall, within twenty-four hours, submit the act with the respective justification to the National Congress, which shall decide by absolute majority.

Paragraph 5 - If the National Congress is in recess, it shall be called extraordinarily within five days.

Paragraph 6 - The National Congress shall examine the decree within ten days as from receipt thereof, and shall remain in operation as long as the state of defense is in force

Paragraph 7 - If the decree is rejected, the state of defense shall cease immediately.

## **SECTION II - THE STATE OF SIEGE**

**Article 137.** The President of the Republic may, after hearing the Council of the Republic and the National Defense Council request authorization from the National Congress to decree the state of siege in the event of:

- I. serious disturbance with nationwide effects or occurrence of facts that evidence the ineffectiveness of a measure taken during the state of defense;
- II. declaration of state of war or response to foreign armed aggression.

Sole paragraph - The President of the Republic shall, on requesting authorization to decree the state of siege or to extend it, submit the reasons that determine such request, and the National Congress shall decide by absolute majority.

**Article 138.** The decree of the state of siege shall specify the period of its duration, the rules required to implement it and the constitutional guarantees that are to be suspended and, after it is published, the President of the Republic shall designate the executor of the specific measures and the areas encompassed.

Paragraph 1 - In the event of article 137, I, the state of siege may not be decreed for more than thirty days nor may each extension exceed such period; in the event of item II, it may be decreed for the entire period of the war or foreign armed aggression.

Paragraph 2 - If authorization to decree the state of siege is requested during parliamentary recess, the President of the Federal Senate shall immediately summon an extraordinary session of the National Congress to convene within five days in order to examine the act.

Paragraph 3 - The National Congress shall remain in session until the end of the coercive measures.

**Article 139.** During the period in which the state of siege decreed under article 137, I, is in force, only the following measures may be taken against persons:

- I. obligation to remain at a specific place;
- II. detention in a building not intended for persons accused of or convicted for common crimes;
- III. restrictions regarding the inviolability of correspondence, the secrecy of communications, the rendering of information and the freedom of press, radio broadcasting and television, as established by law;
- IV. suspension of freedom of assembly;
- V. home search and seizure;
- VI. intervention in public utility companies;
- VII. requisitioning of property.

Sole paragraph - The broadcasting of speeches made by Congressmen in their Legislative Houses is not included in the restrictions of item III, if authorized by the respective Directing Board.

### **SECTION III - GENERAL PROVISIONS**

**Article 140.** The Directing Board of the National Congress shall, after hearing the party leaders, designate a Committee comprised of five of its members to monitor and supervise the implementation of the measures concerning the state of defense and the state of siege.

**Article 141.** Once the state of defense or the state of siege ceases, its effects shall also cease, without prejudice to liability for illicit acts performed by the executors or agents thereof.

Sole paragraph - As soon as the state of defense or the state of siege ceases, the measures applied during the period while it is in force shall be reported by the President of the Republic in a message to the National Congress, with specification and justification of the actions taken, with the listing of the names of those affected and indication of the restrictions applied.

## CHAPTER II - THE ARMED FORCES

**\*Article 142.** The Armed Forces, comprised of the Navy, the Army and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and are intended for the defense of the Country, for the guarantee of the constitutional powers, and, on the initiative of any of these, of law and order.

Paragraph 1 - A supplementary law shall establish the general rules to be adopted in the organization, training and use of the Armed Forces.

Paragraph 2 - Habeas-corpus shall not apply to military disciplinary punishments.

*Paragraph 3 - The members of the Armed Forces are called military, and the following provisions apply to them, in addition to other provisions that the law may establish:*

- I. the ranks, with the prerogatives, rights and duties inherent to them, are awarded by the President of the Republic and are guaranteed in full to officers in active service, those of the reserve or in retirement, and such officers have exclusive rights to military titles and posts, and together with the other members, to the use of the uniforms of the Armed Forces;*
- II. a military in active service who takes office in a permanent civil public position or job shall be transferred to the reserve, under the terms of the law;*
- III. a military in active service who, under the terms of the law, takes office in a non-elective, temporary civil public position, job or function, even if in the indirect administration, shall be put on leave and, as long as he remains in this situation he may only be promoted by seniority, and his period of service shall be counted only for that promotion and for transfer to the reserve, and after two years, whether continuous or not, away from active service, he shall be transferred to the reserve, under the terms of the law;*
- IV. the military are forbidden to join unions and to strike;*
- V. while in actual service, the military are forbidden to belong to political parties;*
- VI. an officer shall only lose his post and rank if he is judged unworthy of or incompatible with the dignity of officership by decision of a permanent military court, in times of peace, or of a special court, in times of war;*
- VII. an officer sentenced in a common or military court by means of an unappealable judgment to imprisonment for more than two years shall be submitted to trial as provided in the preceding item;*
- VIII. the provisions of article 7, items VIII, XII, XVII, XVIII, XIX, and XXV, and of article 37, items XI, XIII, XIV and XV, apply to the military;*
- IX. the provisions of article 40, paragraphs 4, 5, and 6 apply to the military and their pensioners;*
- X. the law shall provide for admission to the Armed Forces, age limits, tenure, and other conditions for a military to be retired, the rights, duties, remuneration,*

*prerogatives and other circumstances which are specific to the military, the special characteristics of their activities being taken into account, including those carried out by virtue of international agreements and of war.*

**Article 143.** Military service is compulsory as set forth by law.

Paragraph 1 - It is within the competence of the Armed Forces, according to the law, to assign an alternative service to those who, in times of peace, after being enlisted, claim imperative of conscience, which shall be understood as originating in religious creed and philosophical or political belief, for exemption from essentially military activities.

Paragraph 2 - Women and clergymen are exempt from compulsory military service in times of peace, but are subject to other duties assigned to them by law.

### **CHAPTER III - PUBLIC SECURITY**

**Article 144.** Public security, the duty of the State and the right and responsibility of all, is exercised to preserve public order and the safety of persons and property, by means of the following agencies:

- I. federal police;
- II. federal highway police;
- III. federal railway police,
- IV. civil polices.
- V. military polices and military fire brigades.

Paragraph 1 - The federal police, instituted by law as a permanent body and structured into a career are limited to

- I. investigate criminal offenses against the political and the social order or to the detriment of property, services and interests of the Union and of its autonomous government entities and public companies, as well as other offenses with interstate or international effects and requiring uniform repression as the law shall establish;
- II. to prevent and repress the illegal traffic of narcotics and like drugs, as well as smuggling, without prejudice to action by the treasury authorities and other government agencies in their respective areas of competence;
- III. to exercise the functions of maritime, air and border police.
- IV. to exercise, exclusively, the functions of criminal police of the Union.

Paragraph 2 - The federal highway police are a permanent body structured into a career and intended, according to the law, to patrol ostensibly the federal highways.

Paragraph 3 - The federal railway police are a permanent body structured into a career and intended, according to the law, to patrol ostensibly the federal railways.

Paragraph 4 - It is incumbent upon the civil police, directed by career police comissioners and except for the competence of the Union, to exercise the functions of criminal police and to investigate criminal offenses, with the exception of the military ones.

Paragraph 5 - It is within the competence of the military polices the ostensive policing and the maintenance of the public order; it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense.

Paragraph 6 - The military polices and military fire brigades, ancillary forces and reserve of the Army, are subject, together with the civil police, to the Governors of the states, of the Federal District and of the territories

Paragraph 7 - The law shall regulate the organization and operation of the agencies responsible for public security in such a manner as to guarantee the efficiency of their activities.

Paragraph 8 - The municipalities may organize municipal guards to protect their property, services and facilities, as the law shall establish.

## **TITLE VI - TAXATION AND BUDGET**

### **CHAPTER I - THE NATIONAL TAX SYSTEM**

#### **SECTION I - GENERAL PRINCIPLES**

**Article 145.** The Union, the states, the Federal District and the municipalities may institute the following tributes:

- I. taxes;
- II. fees, by virtue of the exercise of police power or for the effective or potential use of specific and divisible public services, rendered to the taxpayer or made available to him
- III. benefit charges, resulting from public works.

Paragraph 1 - Whenever possible, taxes shall have an individual character and shall be graded according to the economic capacity of the taxpayer, and the tax administration may, especially to confer effectiveness upon such objectives, with due respect to individual rights and under the terms of the law, identify the property, the incomes and the economic activities of the taxpayer.

Paragraph 2 - Fees may not have the assessment basis reserved for taxes.

**Article 146.** A supplementary law shall:

- I. provide for conflicts of competence concerning tax matters between the Union, the states, the Federal District and the municipalities;
- II. regulate the constitutional limitations on the power to tax;
- III. establish general rules concerning tax legislation, especially with regard to:
  - a. the definition of tributes and their types, as well as, regarding the taxes specified in this Constitution, the definition of the respective taxable events, assessment bases and taxpayers;
  - b. tax liability, assessment, credit, limitation and laches;
  - c. adequate tax treatment for the cooperative acts of cooperative associations.

**Article 147.** In a federal territory, state taxes are within the competence of the Union and, if the territory is not divided into municipalities, also municipal taxes; municipal taxes are within the competence of the Federal District.

**Article 148.** The Union may, by means of a supplementary law, institute compulsory loans:

- I. to meet extraordinary expenses resulting from public calamity, foreign war or the imminence thereof;
- II. in the case of public investment of an urgent nature and relevant national interest, observing the provisions of article 150, III, b.

Sole paragraph - The use of funds deriving from a compulsory loan shall be linked to the expense that justified the institution thereof.

**Article 149.** The Union shall have the exclusive competence to institute social contributions regarding intervention in the economic order and the interest of categories of employees or employers, as an instrument of its activity in the respective areas, observing the provisions of articles 146, III, and 150, I and III, and without prejudice to the provisions of article 195, paragraph 6, as regards the contributions mentioned in the latter article.

Sole paragraph - The states, the Federal District and the municipalities may institute a contribution payable by their employees to fund social security and assistance systems for the benefit of the latter.

## **SECTION II - LIMITATIONS ON THE POWER TO TAX**

**Article 150.** Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to:

- I. impose or increase a tribute without a law to establish it;
- II. institute unequal treatment. ent for taxpayers who are in an equivalent situation, it being forbidden to establish any distinction by reason of professional occupation or function performed by them, independently of the juridical designation of their incomes, titles or rights;
- III. collect tributes:
  - a. for taxable events that occurred before the law which instituted or increased such tributes came into force;
  - b. in the same fiscal year in which the law which instituted or increased such tributes was published;
- IV. use a tribute for the purpose of confiscation;
- V. establish limitations on the circulation of persons or goods, by means of interstate or intermunicipal tributes, except for the collection of toll fees for the use of highways maintained by the Government;
- VI. institute taxes on:
  - a. the property, income or services of one another;
  - b. temples of any denomination;
  - c. the property, income or services of political parties, including their foundations, of worker unions, of non-profit education and social assistance institutions, observing the requirements of the law;

- d. books, newspapers, periodicals and the paper intended for the printing thereof.

Paragraph 1 - The prohibition set forth in item III, b, shall not apply to the taxes provided upon in articles 153, I, II, IV and V, and 154, II.

Paragraph 2 - The prohibition set forth in item VII a, extends to the autonomous government agencies and to the foundations instituted and maintained by the Government, as regards the property, income and services related to their essential purposes or resulting therefrom.

Paragraph 3 - The prohibitions set forth in item VI, a, and in the preceding paragraph do not apply to the property, income and services related to the exploitation of economic activities governed by the regulations which apply to private undertakings, or in which users pay consideration or prices or tariffs. nor exempt a promissory purchaser of real property from the obligation to pay tax thereon.

Paragraph 4 - The prohibitions set forth in item VI, subitems b and c encompass only the property, income and services related to the essential purposes of the entities mentioned therein.

Paragraph 5 - The law shall determine measures for consumers to be informed about taxes levied on goods and services.

Paragraph 6 - Any subsidy or exemption, reduction of assessment basis concession of presumed credit, amnesty or remission, related to taxes, fees or contributions, may only be granted by means of a specific federal, state or municipal law, which provides exclusively for the above-enumerated matters or the corresponding tax, fee or contribution, without prejudice to the provisions of article 155, paragraph 2, item XII, g.

Paragraph 7 - The law may impose upon the taxpayer the burden of the payment of a tax or contribution. If the taxable event occurs later, the immediate and preferential restitution of the amount paid being ensured; in case the presumed taxable event does not occur

**Article 151.** It is forbidden for the Union:

- I. to institute a tribute which is not uniform throughout the entire national territory or which implies a distinction or preference regarding a state, the Federal District or a municipality to the detriment of another, it being allowed to grant tax incentives for the purpose of promoting the balanced social and economic development of the various regions of the country;
- II. to tax income from public debt bonds of the states, of the Federal District and of the municipalities, as well as the remuneration and earnings of the respective public agents, at levels above those established for its own bonds and agents;
- III. to institute exemptions from tributes within the powers of the states, of the Federal District or of the municipalities.

**Article 152.** The states, the Federal District and the municipalities are forbidden to establish a tax difference between goods and services of any nature, by reason of their origin or destination.

### **SECTION III - FEDERAL TAXES**

**Article 153.** The Union shall have the power to institute taxes on:

- I. importation of foreign products;
- II. exportation to other countries of national or nationalized products;
- III. income and earnings of any nature; I
- IV. industrialized products;
- V. credit, foreign exchange and insurance transactions, or transactions relating to bonds or securities;
- VI. rural property;
- VII. large fortunes, under the terms of a supplementary law.

Paragraph 1 - The Executive Power may, observing the conditions and the limits established in law, alter the rates of the taxes enumerated in items I, II, IV and V.

Paragraph 2 - The tax established in item III:

- I. shall be based on the criteria of generality, universality and progressives, under the terms of the law:
- II. shall not be levied, under the terms and within the limits established in law, on income deriving from retirement and pension paid by the social security system of the Union, of the states, of the Federal District and of the municipalities, to a person over sixty-five years of age, whose total income consists exclusively of work earnings.

Paragraph 3 - The tax established in item IV:

- I. shall be selective, based on the essentiality of the product;
- II. shall be non-cumulative, and the tax due in each transaction shall be compensated by the amount charged in previous transactions
- III. shall not be levied on industrialized products intended for export.

Paragraph 4 - The tax established in item VI shall have its rates determined in such a manner as to discourage the retention of unproductive real property and shall not be levied on small tracts of land, as defined in law, when a proprietor who owns no other real property explores them by himself or with his family.

Paragraph 5 - Gold, when defined in law as a financial asset or an exchange instrument, is subject exclusively to the tax established in item V of the caption of the present article, due on the original transaction; the minimum rate shall be one per cent, and the transference of the amount collected is ensured under the following terms:

- I. thirty per cent to the state, the Federal District or the territory, depending on the origin;
- II. seventy per cent to the municipality of origin.

**Article 154.** The Union may institute:

- I. by means of a supplementary law, taxes not instituted in the preceding article, provided that they are non-cumulative and not founded on a taxable event or an assessment basis reserved for the taxes specified in this Constitution;
- II. in the imminence or in the event of foreign war, extraordinary taxes, encompassed or not by its power to tax, which shall be gradually suppressed when the causes for their institution have ceased.

#### **SECTION IV - STATE AND FEDERAL DISTRICT TAXES**

**Article 155.** The states and the Federal District shall have the competence to institute taxes on:

- I. transfer by death and donation of any property or rights;
- II. transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad;
- III. ownership of automotive vehicles.

Paragraph 1 - The tax established in item I:

- I. regarding real property and the respective rights, is within the competence of the state where the property is located, or of the Federal District;
- II. regarding bonds, titles and credits, is within the competence of the Federal District or of the state where the probate or enrollment is processed, or where the donor is domiciled;
- III. a supplementary law shall regulate the competence for the institution of such tax:
  - a. if the donor is domiciled or residing abroad;
  - b. if the deceased owned property, was resident or domiciled or had his probate processed abroad;
- IV. the Federal Senate shall establish the maximum rates for such tax.

Paragraph 2 - The tax established in item II shall observe the following:

- I. it shall be non-cumulative, and the tax due in each transaction concerning the circulation of goods or rendering of services shall be compensated by the amount charged in the previous transactions by the same or by another state or by the Federal District;
- II. exemption or non-levy, except as otherwise determined in the law
  - a. shall not imply credit for compensation relative to the amount due in the subsequent transactions or renderings of services;
  - b. shall cause the annulment of the credit for the previous transactions;
- III. it may be selective, based on the essentiality of the goods or services;
- IV. a resolution of the Federal Senate, on the initiative of the President of the Republic or of one-third of the Senators, approved by the absolute majority of its members, shall establish the rates that apply to interstate and export transactions and rendering of services;
- V. the Federal Senate may:

- a. establish minimum rates for domestic transactions, by means of a resolution on the initiative of one-third and approved by the absolute majority of its members;
  - b. establish maximum rates for the same transactions to settle a specific conflict involving the interest of the states, by means of a resolution on the initiative of the absolute majority and approved by two-thirds of its members;
- VI. unless otherwise determined by the states and the Federal District, under the terms of the provisions of item XII, g, the domestic rates for transactions concerning the circulation of goods and the rendering of services may not be lower than those established for interstate transactions;
- VII. the following shall be adopted for transactions and rendering of goods and services to end-users located in another state
  - a. the interstate rate, when it is incumbent upon the recipient to pay that tax
  - b. the internal rate, when it is not incumbent upon the recipient to pay that tax;
- VIII. in the case of subitem a of the preceding item, the tax corresponding to the difference between the internal and the interstate rate shall be attributed to the state where the recipient is located
- IX. it shall also be levied
  - a. on the entry of goods imported from abroad, even in the case of goods intended for consumption or for the fixed assets of the establishment, as well as on services rendered abroad, and the tax shall be attributed to the state where the establishment receiving the goods or services is located;
  - b. on the total value of the transaction, when goods are supplied with services not included in the power to tax of the municipalities
- X. it shall not be levied
  - a. on transactions transferring industrialized products abroad excluding semi-finished products as defined in a supplementary law
  - b. on transactions transferring petroleum, including lubricants liquid and gaseous fuels derived therefrom, and electric energy to other states
  - c. on gold, in the cases defined in article 153, paragraph 5
- XI. its assessment basis shall not include the amount of the tax on industrialized products when the transaction carried out between taxpayers and concerning a product intended for industrialization or sale represents a taxable event for both taxes
- XII. A supplementary law shall
  - a. define its taxpayers;
  - b. provide for tax substitution;
  - c. regulate the system of tax compensation
  - d. establish, for purposes of collection of the tax and definition of the responsible establishment, the location of the transactions concerning the circulation of goods and the rendering of services;
  - e. exclude from levy of the tax, in exports to other countries, services and other products other than those mentioned in item X, a;
  - f. provide for the event of maintenance of a credit for services and goods remitted to another state and exported to other countries;
  - g. regulate the manner in which, through deliberation by the states and the Federal District, tax exemptions, incentives and benefits shall be granted and revoked.

Paragraph 3 - With the exception of the taxes mentioned in item II of the caption of the present article, and article 153, I and II, no other tribute may be levied on transactions concerning electric energy, telecommunications services, petroleum by-products, fuels and minerals of the country.

## **SECTION V - MUNICIPAL TAXES**

**Article 156.** The municipalities shall have the competence to institute taxes on:

- I. urban buildings and urban land property;
- II. *inter vivos* transfer, on any account, by onerous acts, of real property, by nature or physical accession, and of real rights to property, except for real security, as well as the assignment of rights to the purchase thereof;
- III. services of any nature not included in article 155, II, as defined in a supplementary law.

Paragraph 1 - The tax set forth in item I may be progressive, under the terms of a municipal law, in order to ensure achievement of the social function of the property.

Paragraph 2 - The tax set forth in item II:

- I. shall not be levied on the transfer of goods or rights incorporated into the assets of a corporate body to pay up its capital, nor on the transfer of goods or rights resulting from the merger, incorporation, division or dissolution of corporate bodies, unless, in such cases, the predominant activity of the purchaser is the purchase and sale of such goods or rights, the lease of real property or leasing;
- II. is within the competence of the municipality where the property is located.

Paragraph 3 - As regards the tax established in item III, a supplementary law shall:

- I. establish its maximum rates;
- II. exclude exportations of services to other countries from levy of the said tax.

## **SECTION VI - TAX REVENUE SHARING**

**Article 157.** The following shall be assigned to the states and to the Federal District:

- I. the proceeds from the collection of the federal tax on income and earnings of any nature, levied at source on income paid on any account by them, by their autonomous government entities and by the foundations they institute and maintain;
- II. twenty per cent of the proceeds from the collection of the tax that the Union may institute in the exercise of the powers conferred on it by article 154, I.

**Article 158.** The following shall be assigned to the municipalities:

- I. the proceeds from the collection of the federal tax on income and earnings of any nature, levied at source on income paid on any account by them, by their autonomous government entities and by the foundations they institute and maintain;

- II. fifty per cent of the proceeds from the collection of the federal tax on rural property, concerning real property located in the municipalities;
- III. fifty per cent of the proceeds from the collection of the state tax on the ownership of automotive vehicles licensed in the municipalities;
- IV. twenty-five per cent of the proceeds from the collection of the state tax on transactions regarding the circulation of goods and on rendering of interstate and intermunicipal transportation services and services of communication.

Sole paragraph - The revenue portions assigned to the municipalities, as mentioned in item IV, shall be credited in accordance with the following criteria:

- I. at least three-fourths, in proportion to the value added in the transactions regarding the circulation of goods and the rendering of services carried out in the territory of the municipalities;
- II. up to one-quarter, in accordance with the provisions of a state law or, in the case of the territories, of a federal law.

**Article 159.** The Union shall remit

- I. of the proceeds from the collection of taxes on income and earnings of any nature and on industrialized products, forty-seven per cent as follows:
  - a. twenty-one and a half of one per cent to the Revenue Sharing Fund of the States and of the Federal District;
  - b. twenty-two and a half of one per cent to the Revenue Sharing Fund of the Municipalities;
  - c. three per cent, for application in programs to finance the productive sector of the North, Northeast and Centre-West Regions, through their regional financial institutions, in accordance with regional development plans, the semi-arid area of the Northeast being ensured of half of the funds intended for that Region, as provided by law;
- II. of the proceeds from the collection of the tax on industrialized products, ten per cent to the states and to the Federal District, in proportion to the value of the respective exportations of industrialized products.

Paragraph 1 - For purposes of calculating the amount to be remitted in accordance with the provisions in item I, the portion of the collected tax on income and earnings of any nature assigned to the states, to the Federal District and to the municipalities shall be excluded, as provided by articles 157, I, and 158, I.

Paragraph 2 - No federated unit may be allocated a portion in excess of twenty per cent of the amount referred to in item II, and any excess shall be distributed among the other participants, maintaining, for the latter, the apportionment criterion established therein.

Paragraph 3 - The states shall remit twenty-five per cent of the funds they may receive as provided by item II to the respective municipalities, observing the criteria established in article 158, sole paragraph, I and II.

**Article 160.** It is forbidden to withhold or to make any restriction to the remittance and use of the funds assigned in this section to the states, to the Federal District and to the municipalities, including any tax additions and increases.

Sole paragraph - The prohibition mentioned in the present article does not prevent the Union and the states from remitting the funds on condition of payment of their credits, including those of the autonomous government agencies.

**Article 161.** A supplementary law shall:

- I. define the added value for the purposes provided by article 158, sole paragraph, I;
- II. establish rules for the remittance of the funds referred to in article 159, especially the criteria for the sharing of the funds set forth in its item I, seeking to promote social and economic balance among states and among municipalities;
- III. provide for the monitoring, by the beneficiaries, of the calculation of the quotas and release of the participations set forth in articles 157, 158 and 159.

Sole paragraph - The Federal Court of Accounts shall calculate the quotas referring to the participation funds mentioned in item II.

**Article 162.** The Union, the states, the Federal District and the municipalities shall announce, on or before the last day of the month following that of collection, the amounts of each of the tributes collected, the funds received, the tax sums remitted and to be remitted and the numerical expression of the apportionment criteria.

Sole paragraph - The data announced by the Union shall be discriminated by state and by municipality; those of the states, by municipality.

## **CHAPTER II - PUBLIC FINANCES**

### **SECTION I - GENERAL RULES**

**Article 163.** A supplementary law shall make provisions for:

- I. public finances;
- II. foreign and domestic public debt, including the debt of the autonomous government agencies, foundations and other entities controlled by the Government;
- III. granting of guarantees by government entities; I
- IV. issuance and redemption of public debt bonds;
- V. supervision of financial institutions;
- VI. foreign exchange transactions carried out by bodies and agencies of the Union, of the states, of the Federal District and of the municipalities;
- VII. compatibility of the functions of the official credit institutions of the Union, safeguarding all the characteristics and full operational conditions of those intended for regional development.

**Article 164.** The competence of the Union to issue currency shall be exercised exclusively by the central bank.

Paragraph 1 - It is forbidden for the central bank to grant, either directly or indirectly, loans to the National Treasury and to any body or agency which is not a financial institution.

Paragraph 2 - The central bank may purchase and sell bonds issued by the National Treasury, for the purpose of regulating the money supply or the interest rate.

Paragraph 3 - The cash assets of the Union shall be deposited at the central bank, those of the states, of the Federal District, of the municipalities and of the bodies or agencies of the Government and of the companies controlled by the same, at official financial institutions, excepting the cases established in law.

## **SECTION II - BUDGETS**

**Article 165.** Laws of the initiative of the Executive Power shall establish:

- I. the pluriannual plan;
- II. the budgetary directives;
- III. the annual budgets.

Paragraph 1 - The law which institutes the pluriannual plan shall establish, on a regional basis, the directives, objectives and targets of the federal public administration for the capital expenditures and other expenses resulting therefrom and for those regarding continuous programmes.

Paragraph 2 - The law of budgetary directives shall comprise the targets and priorities of the federal public administration, including the capital expenditures for the subsequent fiscal year, shall guide the drawing up of the annual budget law, shall make provisions for alterations in tax legislation and shall establish the investment policy for the official development financing agencies.

Paragraph 3 - The Executive Power shall, within thirty days after the closing of each two-month period, publish a summarized report on budget implementation.

Paragraph 4 - The national, regional and sectorial plans and programmes set forth in this Constitution shall be drawn up in compliance with the pluriannual plan and shall be examined by the National Congress.

Paragraph 5 - The annual budget law shall include:

- I. the fiscal budget regarding the Powers of the Union? their funds, bodies and entities of the direct and indirect administration, including foundations instituted and maintained by the Government;
- II. the investment budget of companies in which the Union directly or indirectly holds the majority of the voting capital;
- III. the social welfare budget, comprising all direct and indirect administration entitles or bodies connected with social security, as well as funds and foundations instituted and maintained by the Government

Paragraph 6 - The budget bill shall be accompanied by a regionalized statement on the effect on revenues and expenses, deriving from exemptions, amnesties, remissions, subsidies and benefits of a financial, tributary and credit nature.

Paragraph 7 - The functions of the budgets set forth in paragraph 5, 1 and 11, of the present article, compatible with the pluriannual plan, shall include the function of reducing interregional inequalities, according to populational criteria.

Paragraph 8 - The annual budget law shall not contain any provision extraneous to a forecast of revenues and to the establishment of expenses, such prohibition not including authorization to open supplementary credits and to contract credit transactions, even if by advance of revenues, under the terms of the law.

Paragraph 9 - A supplementary law shall:

- I. make provisions for the fiscal year, effectiveness, terms, drawing up and organization of the pluriannual plan, of the law of budgetary directives and of the annual budget law;
- II. establish rules for the financial and property management of the direct and indirect administration, as well as conditions for the institution and operation of funds.

**Article 166.** The bills regarding the pluriannual plan, the budgetary directives, the annual budget and the additional credits shall be examined by the two Houses of the National Congress, in accordance with their common regulations.

Paragraph 1 - It is incumbent upon a permanent joint committee of Senators and Deputies to:

- I. examine and issue its opinion on the bills referred to in the present article and on the accounts submitted annually by the President of the Republic;
- II. examine and issue its opinion on the national, regional and sectorial plans and programmes established in this Constitution, and exercise budgetary monitoring and supervision, without affecting the operation of the other committees of the National Congress and of its Houses, created in accordance with article 58.

Paragraph 2 - Amendments shall be submitted to the joint committee, which shall report on them. and shall be examined, in accordance with the regulations, by the Plenary Session of the two Houses of the National Congress.

Paragraph 3 - Amendments to the bill of the annual budget or to the bills which modify it may only be approved if:

- I. they are compatible with the pluriannual plan and with the law of budgetary directives;
- II. they specify the necessary funds, allowing only those resulting from the annulment of expenses, and excluding those which apply to:
  - a. allocations for personnel and their charges;
  - b. debt servicing;
  - c. constitutional tax transfers to the states, the municipalities and the Federal District; or
- III. they are related:
  - a. to the correction of errors or omissions; or
  - b. to the provisions of the text of the bill of law

Paragraph 4 - Amendments to the bill of budgetary directives may not be approved if they are incompatible with the pluriannual plan.

Paragraph 5 - The President of the Republic may send a message to the National Congress to propose modifications in the bills referred to in the present article as long as the joint committee has not started to vote on the part for which an alteration is being proposed.

Paragraph 6 - The bills of the pluriannual plan law, of the law of budgetary directives and of the annual budget law shall be forwarded by the President of the Republic to the National Congress, under the terms of the supplementary law referred to in article 165, paragraph 9.

Paragraph 7 - The other rules regarding legislative procedure shall apply to the bills mentioned in this article, as long as they are not contrary to the provisions of this section.

Paragraph 8 - Any funds which, as a result of a veto, amendment or rejection of the bill of the annual budget law, have no corresponding expenses, may be allocated, as the case may be, by means of special or supplementary credits, with prior and specific legislative authorization.

**Article 167.** The following are forbidden:

- I. to begin programmes or projects not included in the annual budget law;
- II. to incur expenses or to assume direct obligations which exceed the budgetary or additional credits;
- III. to carry out credit transactions, which exceed the amount of capital expenses, excepting those authorized by means of supplementary or special credits with a specific purpose and approved by an absolute majority of the Legislative Power;
- IV. to bind tax revenues to an agency, fund or expense, excepting the sharing of the proceeds from the collection of the taxes referred to in articles 158 and 159, the allocation of funds for the maintenance and development of education, as determined in article 212, and the granting of guarantees on credit transactions by advance of revenues, as established in article 165? paragraph 8, as well as in paragraph 4 of the present article;
- V. to open a supplementary or special credit without prior legislative authorization and without specification of the corresponding funds;
- VI. to reassign, reallocate or transfer funds from one programming category to another or from one agency to another without prior legislative authorization;
- VII. to grant or use unlimited credits;
- VIII. to use, without specific legislative authorization, funds from the fiscal and social security budgets to supply a necessity or to cover a deficit of companies, foundations and funds, including those mentioned in article 165, paragraph 5;
- IX. to institute funds of any nature without prior legislative authorization.

Paragraph 1 - No investment whose execution exceeds one fiscal year may be implemented without prior inclusion in the pluriannual plan, or without a law to authorize such inclusion, subject to crime of malversation.

Paragraph 2 - Special and extraordinary credits shall be effective in the fiscal year in which they are authorized, unless the authorization act is enacted during the last four months of that fiscal year, in which case, reopened within the limits of their balances, such credits shall be incorporated into the budget of the subsequent fiscal year.

Paragraph 3 - The opening of extraordinary credit may only be allowed to meet unforeseeable and urgent expenses, such as those resulting from war, internal commotion or public calamity, observing the provisions in article 62.

Paragraph 4 - It is permitted to bind proper revenues generated by the taxes referred to in articles 155 and 156 and the funds mentioned in articles 157, 158 and 159, I, a and b, and II, to the granting of a guarantee or a counterguarantee to the Union, and to the payment of debits owed to the same.

**Article 168.** The funds corresponding to the budgetary allocations, including the supplementary and special credits, intended for the bodies of the Legislative and Judicial Powers and for the Public Prosecution, shall be remitted to them on or before the twentieth of each month, as provided by the supplementary law referred to in article 165 paragraph 9.

**Article 169.** Expenditure with active and pensioned personnel of the Union, the states, the Federal District and the municipalities may not exceed the limits established in a supplementary law.

Sole paragraph - The granting of any advantage or increase of remuneration the creation of posts or alteration of career structures, as well as admission of personnel, on any account, by bodies and entities of the direct or indirect administration, including foundations instituted and maintained by the Government, may only be effected:

- I. if there is a prior budgetary allocation sufficient to cover the estimated expenditure with personnel and the increases resulting therefrom;
- II. if there is specific authorization in the law of budgetary directives, excepting the public and the mixed-capital companies.

## **TITLE VII - THE ECONOMIC AND FINANCIAL ORDER**

### **CHAPTER I - THE GENERAL PRINCIPLES OF THE ECONOMIC ACTIVITY**

**\*Article 170.** The economic order, founded on the appreciation of the value of human work and on free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice, with due regard for the following principles

- I. national sovereignty;
- II. private property;
- III. the social function of property;
- IV. free competition;
- V. consumer protection;
- VI. environment protection;
- VII. reduction of regional and social differences;
- VIII. pursuit of full employment;

IX. *preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil.*

Sole paragraph - Free exercise of any economic activity is ensured to everyone, regardless of authorization from government agencies, except in the cases set forth by law.

**\*Article 171.** (revoked).

**Article 172.** The law shall regulate, based on national interests, the foreign capital investments, shall encourage reinvestments and shall regulate the remittance of profits.

**Article 173.** With the exception of the cases set forth in this Constitution, the direct exploitation of an economic activity by the State shall only be allowed whenever needed to the imperative necessities of the national security or to a relevant collective interest, as defined by law.

Paragraph 1 - The public company, the mixed-capital company and other entities engaged in economic activities are subject to the specific legal system governing private companies, including labour and tax liabilities.

Paragraph 2 - The public companies and the mixed-capital companies may not enjoy fiscal privileges which are not extended to companies of the private sector.

Paragraph 3 - The law shall regulate the relationships of public companies with the State and society.

Paragraph 4 - The law shall repress the abuse of economic power that aims at the domination of markets, the elimination of competition and the arbitrary increase of profits.

Paragraph 5 - The law shall, without prejudice to the individual liability of the managing officers of a legal entity, establish the liability of the latter, subjecting it to punishments compatible with its nature, for acts performed against the economic and financial order and against the citizens' monies.

**Article 174.** As the normative and regulating agent of the economic activity, the State shall, in the manner set forth by law, perform the functions of control, incentive and planning, the latter being binding for the public sector and indicative for the private sector.

Paragraph 1 - The law shall establish the guidelines and bases for planning of the balanced national development, which shall embody and make compatible the national and regional development plans.

Paragraph 2 - The law shall support and encourage cooperative activity and other forms of association

Paragraph 3 - The State shall favour the organization of the placer-mining activity in cooperatives, taking into account the protection of the environment and the social-economic furthering of the placer-miners.

Paragraph 4 - The cooperatives referred to in the preceding paragraph shall have priority in obtaining authorization or grant for prospecting and mining of placer resources and deposits in the areas where they are operating and in those established in accordance with article 21, XXV, as set forth by law.

**Article 175.** It is incumbent upon the Government, as set forth by law, to provide public utility services, either directly or by concession or permission, which will always be through public bidding.

Sole paragraph - The law shall provide for:

- I. the operating rules for the public service concession- or permission- holding companies, the special nature of their contract and of the extension thereof, as well as the conditions of forfeiture, control and termination of the concession or permission;
- II. the rights of the users;
- III. tariff policy;
- IV. the obligation of maintaining adequate service.

**\*Article 176.** Mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or use, a property separate from that of the soil and belong to the Union, the concessionaire being guaranteed the ownership of the mined product.

*Paragraph 1 - The prospecting and mining of mineral resources and the utilization of the potentials mentioned in the caption of this article may only take place with authorization or concession by the Union, in the national interest, by Brazilians or by a company organized under Brazilian laws and having its head-office and management in Brazil, in the manner set forth by law, which law shall establish specific conditions when such activities are to be conducted in the boundary zone or on Indian lands.*

Paragraph 2 - The owner of the soil is ensured of participation in the results of the mining operation, in the manner and amount as the law shall establish.

Paragraph 3 - Authorization for prospecting shall always be for a set period of time and the authorization and concession set forth in this article may not be assigned or transferred, either in full or in part, without the prior consent of the conceding authority.

Paragraph 4 - Exploitation of a renewable energy potential of small capacity shall not require an authorization or concession.

**Article 177.** The following are the monopoly of the Union:

- I. prospecting and exploitation of deposits of petroleum and natural gas and of other fluid hydrocarbons;
- II. refining of domestic or foreign petroleum;
- III. import and export of the products and basic by-products resulting from the activities set forth in the preceding items:

- IV. ocean transportation of crude petroleum of domestic origin or of basic petroleum by-products produced in the country, as well as pipeline transportation of crude petroleum, its by-products and natural gas of any origin;
- V. prospecting, mining, enrichment, reprocessing, industrialization and trading of nuclear mineral ores and minerals and their by-products.

*Paragraph 1 - The Union may contract with state-owned or with private enterprises for the execution of the activities provided for in items I through IV of this article, with due regard for the conditions set forth by law.*

*Paragraph 2 - The law referred to in paragraph 1 shall provide for:*

- I. *a guarantee of supply of petroleum products in the whole national territory;*
- II. *the conditions of contracting;*
- III. *the structure and duties of the regulatory agency of the monopoly of the Union.*

Paragraph 3 - The law shall provide with respect to the transportation and use of radioactive materials within the national territory.

**\*Article 178.** *The law shall provide for the regulation of air, water and ground transportation, and it shall, in respect to the regulation of international transportation, comply with the agreements entered into by the Union, with due regard to the principle of reciprocity.*

*Sole paragraph - In regulating water transportation, the law shall set forth the conditions in which the transportation of goods in coastal and internal navigation will be permitted to foreign vessels.*

**Article 179.** The Union, the states, the Federal District and the municipalities shall afford micro-enterprises and small enterprises, as defined by law, differentiated legal treatment, seeking to further them through simplification of their administration, tax, social security and credit obligations or through elimination or reduction thereof by means of law.

**Article 180.** The Union, the states, the Federal District and the municipalities shall promote and further tourism as a factor of social and economic development.

**Article 181.** Compliance with request for a document or for information of commercial nature, made by a foreign administrative or judicial authority to an individual or legal entity residing or domiciled in the country shall depend upon authorization from the competent authority.

## **CHAPTER II - URBAN POLICY**

**Article 182.** The urban development policy carried out by the municipal government, according to general guidelines set forth in the law, is aimed at ordaining the full

development of the social functions of the city and ensuring the well-being of its inhabitants.

Paragraph 1 - The master plan, approved by the City Council, which is compulsory for cities of over twenty thousand inhabitants, is the basic tool of the urban development and expansion policy.

Paragraph 2 - Urban property performs its social function when it meets the fundamental requirements for the ordainment of the city as set forth in the master plan.

Paragraph 3 - Expropriation of urban property shall be made against prior and fair compensation in cash.

Paragraph 4 - The municipal government may, by means of a specific law, for an area included in the master plan, demand, according to federal law, that the owner of unbuilt, underused or unused urban soil provide for adequate use thereof, subject, successively, to:

- I. compulsory parceling or construction;
- II. rates of urban property and land tax that are progressive in time;
- III. expropriation with payment in public debt bonds issued with the prior approval of the Federal Senate, redeemable within up to ten years, in equal and successive annual installments, ensuring the real value of the compensation and the legal interest.

**Article 183.** An individual who possesses an urban area of up to two hundred and fifty square meters, for five years, without interruption or opposition, using it as his or as his family's home, shall acquire domain of it, provided that he does not own any other urban or rural property.

Paragraph 1 - The deed of domain and concession of use shall be granted to the man or woman, or both, regardless of their marital status.

Paragraph 2 - This right shall not be recognized for the same holder more than once.

Paragraph 3 - Public real estate shall not be acquired by prescription.

### **CHAPTER III - AGRICULTURAL AND LAND POLICY AND AGRARIAN REFORM**

**Article 184.** It is within the power of the Union to expropriate on account of social interest, for purposes of agrarian reform, the rural property which is not performing its social function, against prior and fair compensation in agrarian debt bonds with a clause providing for maintenance of the real value, redeemable within a period of up to twenty years computed as from the second year of issue, and the use of which shall be defined in the law.

Paragraph 1 - Useful and necessary improvements shall be compensated in cash.

Paragraph 2 - The decree declaring the property as being of social interest for agrarian reform purposes empowers the Union to start expropriation action.

Paragraph 3 - It is incumbent upon a supplementary law to establish special summary adversary proceeding for expropriation action.

Paragraph 4 - The budget shall determine each year the total volume of agrarian debt bonds, as well as the total amount of funds to meet the agrarian reform programme in the fiscal year.

Paragraph 5 - The transactions of transfer of property expropriated for agrarian reform purposes are exempt from federal, state and municipal taxes.

**Article 185.** Expropriation of the following for agrarian reform purposes is not permitted:

- I. small and medium-size rural property, as defined by law, provided its owner does not own other property;
- II. productive property.

Sole paragraph - The law shall guarantee special treatment for the productive property and shall establish rules for the fulfilment of the requirements regarding its social function.

**Article 186.** The social function is met when the rural property complies simultaneously with, according to the criteria and standards prescribed by law, the following requirements:

- I. rational and adequate use;
- II. adequate use of available natural resources and preservation of the environment;
- III. compliance with the provisions that regulate labour relations;
- IV. exploitation that favours the well-being of the owners and labourers.

**Article 187.** The agricultural policy shall be planned and carried out as established by law, with the effective participation of the production sector, comprising producers and rural workers, as well as the marketing, storage and transportation sectors, with especial consideration for

- I. the credit and fiscal mechanisms;
- II. prices compatible with production costs and the guarantee of marketing;
- III. research and technology incentives;
- IV. technical assistance and rural extension;
- V. agricultural insurance;
- VI. cooperative activity;
- VII. rural electricity and irrigation systems;
- VIII. housing for the rural workers.

Paragraph 1 - Agricultural planning includes agroindustrial, stock raising, fishing and forestry activities.

Paragraph 2 - Agricultural policy and agrarian reform actions shall be made compatible.

**Article 188.** The destination given to public and unoccupied lands shall be made compatible with the agricultural policy and the national agrarian reform plan.

Paragraph 1 - The alienation or concession in any way of public lands with an area of more than two thousand and five hundred hectares to an individual or legal entity, even if through an intermediary, shall depend on the prior approval of the National Congress.

Paragraph 2 - Alienations or concessions of public lands for agrarian reform purposes are excluded from the provisions of the preceding paragraph.

**Article 189.** The beneficiaries of distribution of rural land through agrarian reform shall receive title-deeds or concession of use which may not be transacted for a period of ten years.

Sole paragraph - The title-deed and the concession of use shall be granted to the man or the woman, or to both, irrespective of their marital status, according to the terms and conditions set forth by law.

**Article 190.** The law shall regulate and limit the acquisition or lease of rural property by a foreign individual or legal entity, and shall establish the cases that shall depend on authorization by the National Congress.

**Article 191.** The individual who, not being the owner of rural or urban property, holds as his own, for five uninterrupted years, without opposition, an area of land in the rural zone, not exceeding fifty hectares, making it productive with his labour or that of his family, and having his dwelling thereon, shall acquire ownership of the land.

Sole paragraph - The public real estate shall not be acquired by prescription.

#### **CHAPTER IV - THE NATIONAL FINANCIAL SYSTEM**

**\*Article 192.** The national financial system, structured to promote the balanced development of the country and to serve the collective interests, shall be regulated by a supplementary law which shall also provide for:

- I. authorization for the operation of financial institutions, it being ensured the access of the official and private banks to all the instruments of the banking financial market, such institutions being prohibited from taking part in activities not provided for in the authorization mentioned in this item;
- II. *authorization and operation of insurance, reinsurance, social security and capitalization companies, as well as of the supervising agency;*
- III. conditions for the participation of foreign capital in the institutions to which the preceding items refer to, considering especially:
  - a. the national interests;
  - b. the international agreements;
- IV. organization, operation and duties of the central bank and other public and private financial institutions;
- V. requirements for the appointment of members of the board of directors of the central bank and other financial institutions, as well as their impediments after leaving office;
- VI. creation of a fund or insurance, for the purpose of protecting the citizens' monies, guaranteeing credits, investments and deposits up to a certain amount, it being forbidden the participation of funds of the Union;

- VII. the restrictive criteria of the transfer of savings from regions with income below the national average to others of greater development;
- VIII. the operation of credit cooperatives and the requirements for them to obtain operational and structural conditions characteristic of financial institutions.

Paragraph 1 - The authorization referred to in items I and II shall be non- negotiable and non-transferable, it being allowed the transfer of control of the incumbent legal entity, and shall be granted, free of charge, according to the national financial system law, to a legal entity whose directors are technically capable and of spotless reputation and which proves that its economic capacity is compatible with the undertaking.

Paragraph 2 - The financial resources relating to regional programmes and projects under the responsibility of the Union shall be deposited at their regional credit institutions and invested by them.

Paragraph 3 - Real interest rates, including commissions and any other compensation directly or indirectly related to the concession of credit, shall not exceed twelve percent per annum; charges above this limit shall be considered crime of usury, which shall be punished in all of its forms, as the law shall determine.

## **TITLE VIII - THE SOCIAL ORDER**

### **CHAPTER I - GENERAL PROVISION**

**Article 193.** The social order is based on the primacy of work and aimed at social well-being and justice.

## **CHAPTER II SOCIAL WELFARE**

### **SECTION I - GENERAL PROVISIONS**

**Article 194.** Social welfare comprises an integrated whole of actions initiated by the Government and by society, with the purpose of ensuring the rights to health, social security and assistance.

Sole paragraph - It is incumbent upon the Government, as provided by law, to organize social welfare, based on the following objectives:

- I. universality of coverage and service;
- II. uniformity and equivalence of benefits and services for urban and rural populations;
- III. selectivity and distributiveness in the provision of benefits and services;
- IV. irreducibility of the value of the benefits;
- V. equitable participation in funding;
- VI. diversity of the financing basis;
- VII. democratic and decentralized character of administrative management, with the participation of the community, particularly of workers, businessmen and retired persons.

**Article 195.** Social welfare shall be financed by all of society, either directly or indirectly, as provided by law, with funds coming from the budgets of the Union, the states, the Federal District and the municipalities and from the following welfare contributions:

- I. of employers, calculated on the payroll, revenues and profits;
- II. of workers;
- III. and the revenues of lotteries.

Paragraph 1 - The revenues of the states, the Federal District and the municipalities allotted to social welfare shall be included in the respective budgets, not being part of the budget of the Union.

Paragraph 2 - The proposal for the social welfare budget shall be drawn up jointly by the agencies responsible for health, social security and social assistance, in accordance with the goals and priorities established in the law of budgetary directives, ensuring each area of the management of its funds.

Paragraph 3 - A legal entity indebted to the social welfare system, as established in law, may not contract with the Government nor receive benefits or fiscal or credit incentives therefrom.

Paragraph 4 - The law may institute other sources intended to guarantee the maintenance or expansion of social welfare, with due regard to the provisions of article 154, I.

Paragraph 5 - No social welfare benefit or service may be created, increased or extended without a corresponding source of full funding.

Paragraph 6 - The social contributions referred to in this article may only be collected ninety days after the publication of the law which instituted or modified them, the provisions of article 150, III, b, not applying thereto.

Paragraph 7 - Benevolent entities of social assistance which meet the requirements established in law shall be exempt from contribution to social welfare.

Paragraph 8 - Rural producers, sharecroppers and tenant farmers, placer miners and self-employed fishermen, as well as their spouses, who exercise their activities within a household system and without permanent employees shall contribute to social welfare by applying a rate to the proceeds from the sale of their production and shall be entitled to the benefits provided by law.

## **SECTION II - HEALTH**

**Article 196.** Health is a right of all and a duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery.

**Article 197.** Health actions and services are of public importance, and it is incumbent upon the Government to provide, in accordance with the law, for their regulation, supervision and control, and they shall be carried out directly or by third parties and also by individuals or private legal entities

**Article 198.** Health actions and public services integrate a regionalized and hierarchical network and constitute a single system, organized according to the following directives:

- I. decentralization, with a single management in each sphere of government;
- II. full service, priority being given to preventive activities, without prejudice to assistance services;
- III. participation of the community.

Sole paragraph - The unified health system shall be financed, as set forth in article 195, with funds from the social welfare budget of the Union, the states, the Federal District and the municipalities, as well as from other sources.

**Article 199.** Health assistance is open to private enterprise.

Paragraph 1 - Private institutions may participate in a supplementary manner in the unified health system, in accordance with the directives established by the latter, by means of public law contracts or agreements, preference being given to philanthropic and non-profit entities.

Paragraph 2 - The allocation of public funds to aid or subsidize profit- oriented private institutions is forbidden.

Paragraph 3 - Direct or indirect participation of foreign companies or capital in health assistance in the country is forbidden, except in cases provided by law.

Paragraph 4 - The law shall provide for the conditions and requirements which facilitate the removal of organs, tissues and human substances for the purpose of transplants, research and treatment, as well as the collection, processing and transfusion of blood and its by-products, all kinds of sale being forbidden.

**Article 200.** It is incumbent upon the unified health system, in addition to other duties, as set forth by the law:

- I. to supervise and control proceedings, products and substances of interest to health and to participate in the production of drugs, equipments, immunobiological products, blood products and other inputs;
- II. to carry out actions of sanitary and epidemiologic vigilance as well as those relating to the health of workers;
- III. to organize the training of personnel in the area of health;
- IV. to participate in the definition of the policy and in the implementation of basic sanitation actions;
- V. to foster, within its scope of action, scientific and technological development;
- VI. to supervise and control foodstuffs, including their nutritional contents, as well as drinks and water for human consumption;
- VII. to participate in the supervision and control of the production, transportation, storage and use of psychoactive, toxic and radioactive substances and products;
- VIII. to cooperate in the preservation of the environment, including that of the workplace.

### **SECTION III - SOCIAL SECURITY**

**Article 201.** The social security plans, upon contribution, shall provide for, in accordance with the law:

- I. coverage for the events of illness, disability, death, including those resulting from employment related accidents, old age and confinement;
- II. aid for the support of the dependants of the low-income insured;
- III. protection to maternity, especially to pregnant women;
- IV. protection to workers in a situation of involuntary unemployment;
- V. pension for death of the insured, man or woman, to the spouse or companion, and dependants, complying with the provisions of paragraph 5 and of article 202.

Paragraph 1 - Any person may receive social security benefits, upon contributions, as established in the social security plans.

Paragraph 2 - Adjustment of the benefits is ensured, to the end that its real value is permanently maintained, in accordance with criteria defined by law.

Paragraph 3 - All contribution salaries included in the calculation of the benefit shall suffer monetary correction.

Paragraph 4 - The amounts habitually earned by an employee, on any account, shall be incorporated into the salary for purposes of security contribution and the resulting effects on benefits, in the cases and in the manner provided by law.

Paragraph 5 - No benefit which replaces the contribution salary or work earnings of the insured shall have a monthly value lower than the minimum wage.

Paragraph 6 - The Christmas bonus for the retired and pensioners shall be based on the value of the earnings in the month of December of each year.

Paragraph 7 - Social security shall maintain a collective insurance, of a complementary and optional nature, funded by additional contributions.

Paragraph 8 - Any subsidy or aid from Government to profit-oriented private security entities are forbidden.

**Article 202.** Retirement is ensured, in the manner prescribed by law, the benefit being calculated on the average of the last thirty-six contribution salaries, after month by month monetary correction, and upon verification of the regularity of the adjustments of the contribution salaries, so as to maintain the real values, and upon compliance with the following conditions:

- I. at sixty-five years of age for men and sixty years for women, this age limit being reduced in five years for rural workers of both sexes and for those who exercise their activities within a family production system, therein included the rural producer, the placer miner and the self-employed fisherman;
- II. after thirty-five years of work for men, and after thirty years for women, or after a shorter period, if subject to work under special conditions, which may be harmful to health or physical integrity, as defined by law;
- III. after thirty years for male teachers and after twenty-five years for female teachers, for actual exercise of the teaching function.

Paragraph 1 - Proportional retirement shall be allowed, after thirty years of work for men and twenty-five years for women.

Paragraph 2 - For purposes of retirement, the reciprocal computation of the period of contribution in public administration and in private activity, either rural or urban, shall be ensured, in which case the various social security systems shall compensate each other financially, in accordance with criteria established by law.

## **SECTION IV - SOCIAL ASSISTANCE**

**Article 203.** Social assistance shall be rendered to whomever may need it. regardless of contribution to social welfare and shall have as objectives:

- I. the protection of the family, maternity, childhood. adolescence and old age:
- II. the assistance to needy children and adolescents;
- III. the promotion of the integration into the labour market;
- IV. the habilitation and rehabilitation of the handicapped and their integration into community life:
- V. the guarantee of a monthly benefit of one minimum wage to the handicapped and to the elderly who prove their incapability of providing for their own support or having it provided for by their families. as set forth by law.

**Article 204.** Government actions in the area of social assistance shall be implemented with funds from the social welfare budget, as provided for in article 195, in addition to other sources, and organized on the basis of the following directives:

- I. political and administrative decentralization, the coordination and the general rules being incumbent upon the federal sphere, and the coordination and implementation of the respective programmes, upon the state and municipal spheres, as well as upon benevolent and social assistance entities:
- II. participation of the population, by means of organizations representing them in the formulation of policies and in the control of actions taken at all levels.

## **CHAPTER III - EDUCATION. CULTURE AND SPORTS**

### **SECTION I - EDUCATION**

**Article 205.** Education, which is the right of all and duty of the State and of the family, shall be promoted and fostered with the cooperation of society, with a view to the full development of the person, his preparation for the exercise of citizenship and his qualification for work

**Article 206.** Education shall be provided on the basis of the following principles:

- I. equal conditions of access and permanence in school;
- II. freedom to learn, teach, research and express thought, art and knowledge;
- III. pluralism of pedagogic ideas and conceptions and coexistence of public and private teaching institutions;
- IV. free public education in official schools:
- V. appreciation of the value of teaching professionals, guaranteeing, in accordance with the law, career plans for public school teachers, with a professional minimum

salary and admittance exclusively by means of public entrance examinations consisting of tests and presentation of academic and or professional credentials, a single legal regime being insured for all the institutions maintained by the Union:

- VI. democratic administration of public education, in the manner prescribed by law;
- VII. guarantee of standards of quality.

**\*Article 207.** The universities shall have didactic, scientific, administrative, financial and property management autonomy and shall comply with the principle of non-dissociation of teaching, research and extension

Paragraph 1 - The universities are permitted to hire foreign professors, technicians and scientists as provided by law.

Paragraph 2 - The provisions of this article apply to scientific and technological research institutions.

**\*\*Article 208.** The duty of the State towards education shall be fulfilled by ensuring the following:

- I. *mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at the proper age,*
- II. *progressive universalization of the free high-school education;*
- III. specialized schooling for the handicapped, preferably in the regular school system;
- IV. assistance to children of zero to six years of age, in day-care centers and pre-schools;
- V. access to higher levels of education, research and artistic creation according to individual capacity;
- VI. provision of regular night courses adequate to the conditions of the student;
- VII. assistance to elementary school students by means of supplementary programmes providing school material, transportation. food and health assistance.

Paragraph 1 - The access to compulsory and free education is a subjective public right.

Paragraph 2 - The competent authority shall be liable for the failure of the Government in providing compulsory education or providing it irregularly.

Paragraph 3 - The Government has the power to take a census of elementary school students, call them for enrollment and ensure that parents or guardians see to their children's attendance to school.

**Article 209.** Teaching is open to private enterprise, provided that the following conditions are met:

- I. compliance with the general rules of national education;
- II. authorization and evaluation of quality by the Government.

**Article 210.** Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.

Paragraph 1 - The teaching of religion is optional and shall be offered during the regular school hours of public elementary schools.

Paragraph 2 - Regular elementary education shall be given in the Portuguese language and Indian communities shall also be ensured the use of their native tongues and their own learning methods.

**\*Article 211.** The Union, the states, the Federal District and the municipalities shall cooperate in the organization of their educational systems.

Paragraph 1 - The Union shall organize the federal educational system and that of the Territories, shall finance the federal public educational institutions and shall have, in educational matters, a redistributive and supplementary function, so as to guarantee the equalization of the educational opportunities and a minimum standard of quality of education, through technical and financial assistance to the states, the Federal District and the municipalities.

Paragraph 2 - The municipalities shall act on a priority basis in elementary education and in the education of children.

Paragraph 3 - The states and the Federal District shall act on a priority basis in elementary and secondary education.

Paragraph 4 - In the operation of their educational systems, the states and municipalities shall establish forms of cooperation, so as to guarantee the universalization of the mandatory education. <p>\*CA 14/96. **\*Article 212.** The Union shall apply, annually, never less than eighteen percent, and the states, the Federal District, and the municipalities, at least twenty-five percent of the tax revenues, including those resulting from transfers, in the maintenance and development of education.

Paragraph 1 - The share of tax revenues, transferred by the Union to the states, the Federal District and the municipalities, or by the states to the respective municipalities, shall not be considered, for purposes of the calculation provided by this article, as revenues of the government which transfers it.

Paragraph 2 - For purposes of compliance with the caption of this article, the federal, state and municipal educational systems, as well as the funds applied in accordance with article 213 shall be taken into consideration.

Paragraph 3 - In the distribution of public funds, priority shall be given to the providing for the needs of compulsory education, as set forth in the national educational plan.

Paragraph 4 - The supplementary food and health assistance programmes provided by article 208, VII, shall be financed with funds derived from social contributions and other budgetary funds.

Paragraph 5 - The public elementary education shall have, as an additional source of financing, the social contribution for education, collected from companies, as provided by law.

**Article 213.** Public funds shall be allocated to public schools, and may be channelled to community, religious or philanthropic schools, as defined by law, which

- I. prove that they do not seek profit and that they apply their surplus funds in education;
- II. ensure that their assets shall be assigned to another community, religious or philanthropic schools, or to the Government in case they cease their activities.

Paragraph 1 - The funds provided by this article may be allocated to elementary and secondary school scholarships, as provided by law, for those who prove insufficiency of means, when there are no vacancies or no regular courses are offered in the public school system of the place where the student lives, the Government being placed under the obligation to invest, on a priority basis, in the expansion of the public system of the locality.

Paragraph 2 - Research and extension activities at university level may receive financial support from the Government

**Article 214.** The law shall establish the pluriannual national educational plan, with a view to the coordination and development of teaching, at its various levels, and to the integration of the Government actions leading to:

- I. eradication of illiteracy;
- II. universalization of school assistance;
- III. improvement of the quality of education;
- IV. professional training;
- V. humanistic, scientific and technological advancement of the country.

## **SECTION II - CULTURE**

**Article 215.** The state shall ensure to all the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions.

Paragraph 1 - The State shall protect the expressions of popular, Indian and Afro-Brazilian cultures, as well as those of other groups participating in the national civilization process.

Paragraph 2 - The law shall provide for the establishment of commemorative dates of high significance for the various national ethnic segments.

**Article 216.** The Brazilian cultural heritage consists of the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form the Brazilian society, therein included:

- I. forms of expression;
- II. ways of creating, making and living;
- III. scientific, artistic and technological creations;
- IV. works, objects, documents, buildings and other spaces intended for artistic and cultural expressions;
- V. urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value.

Paragraph 1 - The Government shall, with the cooperation of the community, promote and protect the Brazilian cultural heritage, by means of inventories, registers, vigilance, monument protection decrees, expropriation and other forms of precaution and preservation.

Paragraph 2 - It is incumbent upon the Government, in accordance with the law, to manage the keeping of the governmental documents and to make them available for consultation to whomever may need to do so.

Paragraph 3 - The law shall establish incentives for the production and knowledge of cultural assets and values

Paragraph 4 - Damages and threats to the cultural heritage shall be punished in accordance with the law

Paragraph 5 - All documents and sites bearing historical reminiscence to the ancient communities of runaway slaves are protected as national heritage.

### **SECTION III - SPORTS**

**Article 217.** It is the duty of the State to foster the practice of formal and informal sports, as a right of each individual, with due regard for:

- I. the autonomy of the directing sports entities and associations, as to their organization and operation;
- II. the allocation of public funds with a view to promoting, on a priority basis, educational sports and, in specific cases, high performance sports;
- III. differentiated treatment for professional and non-professional sports;
- IV. the protection and fostering of sports created in the country.

Paragraph 1 - The Judicial Power shall only accept legal actions related to sports discipline and competitions after the instances of the sports courts, as regulated by law, have been exhausted.

Paragraph 2 - The sports courts shall render final judgement within sixty days, at the most, counted from the date of the filing of the action.

Paragraph 3 - The Government shall encourage leisure, as a form of social promotion.

### **CHAPTER IV - SCIENCE AND TECHNOLOGY**

**Article 218.** The State shall promote and foster scientific development, research and technological expertise.

Paragraph 1 - Basic scientific research shall receive preferential treatment from the State, with a view to public well-being and the advancement of science

Paragraph 2 - Technological research shall be directed mainly to the solution of Brazilian problems and to the development of the national and regional productive system.

Paragraph 3 - The State shall support the training of human resources in the areas of science, research and technology and shall offer special work means and conditions to those engaged in such activities.

Paragraph 4 - The law shall support and foster the companies which invest in research, creation of technology appropriate for the country, training and improvement of their human resources and those which adopt remuneration systems that ensure employees a share of the economic earnings resulting from the productivity of their work, apart from the salary.

Paragraph 5 - The states and the Federal District may allocate a share of their budgetary revenues to public entities which foster scientific and technological education and research.

**Article 219.** The domestic market is part of the national patrimony and shall be supported with a view to permitting cultural and socio-economic development, the well-being of the population and the technological autonomy of the country, as set forth in a federal law.

## **CHAPTER V - SOCIAL COMMUNICATION**

**Article 220.** The manifestation of thought, the creation, the expression and the information, in any form, process or medium shall not be subject to any restriction, with due regard to the provisions of this constitution.

Paragraph 1 - No law shall contain any provision which may represent a hindrance to full freedom of press in any medium of social communication, with due regard to the provisions of article 5, IV, V, X XIII, and XIV.

Paragraph 2 - Any and all censorship of a political, ideological and artistic nature is forbidden.

Paragraph 3 - It is within the competence of federal laws to:

- I. regulate public entertainment and shows, it being incumbent upon the Government to inform on their nature, the age brackets they are not recommended for and places and times unsuitable for their exhibition:
- II. establish legal means which afford persons and families the possibilities of defending themselves against radio and television programmes and schedules which go contrary to the provisions of article 221, as well as against publicity of products, practices and services which may be harmful to health or to the environment.

Paragraph 4 - Commercial advertising of tobacco, alcoholic beverages, pesticides, medicines and therapies shall be subject to legal restrictions, in accordance with item II of the preceding paragraph and shall contain, whenever necessary, a warning concerning the damages which may be caused by their use.

Paragraph 5 - Social communication media may not, directly or indirectly, be subject to monopoly or oligopoly.

Paragraph 6 - The publication of a printed social communication medium shall not depend on license from authorities.

**Article 221.** The production and programming of radio and television stations shall comply with the following principles:

- I. preference to educational, artistic, cultural and informative purposes;
- II. promotion of national and regional culture and fostering of independent productions aimed at their diffusion;
- III. regional differentiation of cultural, artistic and press production, according to percentages established by the law;
- IV. respect for the ethical and social values of the person and the family.

**Article 222.** Newspapers and sound broadcasting companies, or sound and image broadcasting companies shall be owned exclusively by native Brazilians or those naturalized for more than ten years, who shall be responsible for their management and intellectual orientation.

Paragraph 1 - Legal entities shall not participate in the capital stock of journalistic and radio broadcasting companies, except for political parties and for corporations whose capital is exclusively and nominally owned by Brazilians.

Paragraph 2 - The participation referred to in the preceding paragraph may only take place through non-voting capital and shall not exceed thirty percent of the capital stock.

**Article 223.** The Executive Power has the authority to grant and renew concession, permission and authorization for radio broadcasting and sound and image broadcasting services with due regard to the principle of the complementary roles of private, public and state systems.

Paragraph 1 - The National Congress shall consider such proposition in the period of time set forth in article 64, paragraphs 2 and 4. counted from the date of receipt of the message.

Paragraph 2 - The non-renewal of the concession or permission shall depend on approval by at least two-fifths of the National Congress. in nominal voting.

Paragraph 3 - The granting or renewal shall only produce legal effects after approval by the National Congress, as set forth in the preceding paragraphs.

Paragraph 4 - Cancellation of a concession or permission prior to its expiring date shall depend on a court decision

Paragraph 5 - The term for a concession or permission shall be ten years for radio stations and fifteen years for television channels.

**Article 224.** For the purposes of the provisions of this chapter. the National Congress shall institute, as an auxiliary agency; the Social Communication Council, in the manner prescribed by law.

## CHAPTER VI - ENVIRONMENT

**Article 225.** All have the right to an ecologically balanced environment. which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.

Paragraph 1 - In order to ensure the effectiveness of this right, it is incumbent upon the Government to:

- I. preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems;
- II. preserve the diversity and integrity of the genetic patrimony of the country and to control entities engaged in research and manipulation of genetic material;
- III. define, in all units of the Federation, territorial spaces and their components which are to receive special protection. any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden;
- IV. demand, in the manner prescribed by law, for the installation of works and activities which may potentially cause significant degradation of the environment, a prior environmental impact study, which shall be made public;
- V. control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment;
- VI. promote environment education in all school levels and public awareness of the need to preserve the environment;
- VII. protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty.

Paragraph 2 - Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent public agency, as provided by law.

Paragraph 3 - Procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused.

Paragraph 4 - The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources.

Paragraph 5 - The unoccupied lands or lands seized by the states through discriminatory actions which are necessary to protect the natural ecosystems are inalienable.

Paragraph 6 - Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed.

## **CHAPTER VII - FAMILY, CHILDREN, ADOLESCENTS AND THE ELDERLY**

**Article 226.** The family, which is the foundation of society, shall enjoy special protection from the State.

Paragraph 1 - Marriage is civil and the marriage ceremony is free of charge.

Paragraph 2 - Religious marriage has civil effects, in accordance with the law.

Paragraph 3 - For purposes of protection by the State, the stable union between a man and a woman is recognized as a family entity, and the law shall facilitate the conversion of such entity into marriage.

Paragraph 4 - The community formed by either parent and their descendants is also considered as a family entity.

Paragraph 5 - The rights and the duties of marital society shall be exercised equally by the man and the woman.

Paragraph 6 - Civil marriage may be dissolved by divorce, after prior legal separation for more than one year in the cases set forth by law, or after two years of proven de facto separation.

Paragraph 7 - Based on the principles of human dignity and responsible parenthood, family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden.

Paragraph 8 - The State shall ensure assistance to the family in the person of each of its members, creating mechanisms to suppress violence within the family.

**Article 227.** It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

Paragraph 1 - The State shall promote full health assistance programmes for children and adolescents, the participation of non-governmental entities being allowed, and with due regard to the following precepts:

- I. allocation of a percentage of public health care funds to mother and child assistance;
- II. creation of preventive and specialized care programmes for the physically, sensorially or mentally handicapped, as well as programmes for the social integration of handicapped adolescents, by means of training for a profession and for community life, and by means of facilitating the access to communal facilities and services, by eliminating prejudices and architectonic obstacles.

Paragraph 2 - The law shall regulate construction standards for public sites and buildings and for the manufacturing of public transportation vehicles, in order to ensure adequate access to the handicapped.

Paragraph 3 - The right to special protection shall include the following aspects:

- I. minimum age of fourteen years for admission to work, with due regard to the provisions of article 7, XXXIII;
- II. guarantee of social security and labour rights;
- III. guarantee of access to school for the adolescent worker;
- IV. guarantee of full and formal knowledge of the determination of an offense, equal rights in the procedural relationships and technical defense by a qualified professional, in accordance with the provisions of the specific protection legislation;
- V. compliance with the principles of brevity, exceptionality and respect to the peculiar conditions of the developing person, when applying any measures that restrain freedom;
- VI. Government fostering, by means of legal assistance, tax incentives and subsidies, as provided by law, of the protection, through guardianship, of orphaned or abandoned children or adolescents;
- VII. prevention and specialized assistance programmes for children and adolescents addicted to narcotics or related drugs.

Paragraph 4 - The law shall severely punish abuse, violence and sexual exploitation of children and adolescents.

Paragraph 5 - Adoption shall be assisted by the Government, as provided by law, which shall establish cases and conditions for adoption by foreigners.

Paragraph 6 - Children born inside or outside wedlock or adopted shall have the same rights and qualifications, any discriminatory designation of their filiation being forbidden.

Paragraph 7 - In attending to the rights of children and adolescents, the provisions of article 204 shall be taken into consideration.

**Article 228.** Minors under eighteen years of age may not be held criminally liable and shall be subject to the rules of the special legislation.

**Article 229.** It is the duty of parents to assist, raise and educate their under- age children and it is the duty of children of age to help and assist their parents in old-age, need or sickness.

**Article 230.** It is the duty of the family, society and the State, to assist the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing their right to life.

Paragraph 1 - Assistance programmes for the elderly shall be carried out preferably within their homes.

Paragraph 2 - Those over sixty-five years of age are guaranteed free urban public transportation.

## **CHAPTER VIII - INDIANS**

**Article 231.** Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.

Paragraph 1 - Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2 - The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 3 - Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.

Paragraph 4 - The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

Paragraph 5 - The removal of Indian groups from their lands is forbidden, except by referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.

Paragraph 6 - Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law.

Paragraph 7 - The provisions of article 174, paragraphs 3 and 4, shall not apply to Indian lands.

**Article 232.** The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

## **TITLE IX - GENERAL CONSTITUTIONAL PROVISIONS**

**Article 233.** For the purposes of article 7, XXIX, rural employers shall, every five years, present evidence before the Labour Courts that they have fulfilled their labour obligations toward rural employees in the presence of the latter and of their union representative

Paragraph 1 - Upon evidence that the obligations mentioned in this article have been fulfilled, the employer shall be exempt from any charges deriving from those obligations in the respective period. In case the employee and his representative do not agree with the evidence presented by the employer, it shall be incumbent upon the Labour Courts to resolve the dispute.

Paragraph 2 - The employee shall, in any case, have the right to claim in court the credits to which he believes he is entitled referring to the last five years.

Paragraph 3 - The evidence mentioned in this article may be produced at intervals of less than five years, at the discretion of the employer.

**Article 234.** It is forbidden for the Union to assume, directly or indirectly, as a result of the creation of a state, burdens related to expenses with inactive personnel and with charges and repayments of internal or foreign debt of the public administration, including those of the indirect administration.

**Article 235.** During the first ten years after the creation of a state the following basic rules shall be observed:

- I. the Legislative Assembly shall be composed of seventeen Deputies if the population of the state is less than six hundred thousand inhabitants, and of twenty-four Deputies if it is equal to or greater than this number, up to one million and five hundred thousand inhabitants;
- II. the Government shall have at most ten Secretariats;
- III. the Court of Accounts shall have three members, appointed by the elected Governor, among Brazilians of proven good repute and notable knowledge;
- IV. the Court of Justice shall have seven Judges;
- V. the first Judges shall be appointed by the elected Governor, chosen in the following manner:
  - a. five of them from among judges with more than thirty-five years of age, in exercise within the area of the new state or of the original one;
  - b. two of them from among public prosecutors, under the same conditions, and from among attorneys of proven good repute and legal knowledge, with at least ten years of professional practice. complying with the procedures set forth in this Constitution;
- VI. in the case of a state which originated from a federal territory, the first five Judges may be chosen from among judges from any part of the country;
- VII. in each judicial district the first Judge, the first Public Prosecutor and the first Public Defender shall be appointed by the elected Governor after a public entrance examination of tests and presentation of academic and professional credentials;
- VIII. until the promulgation of the state Constitution, the offices of Attorney-General, Advocate-General and Defender-General shall be held by lawyers of notable knowledge, with at least thirty-five years of age, appointed by the elected Governor and removable *ad nutum*;
- IX. if the new state results from the transformation of a federal territory the transfer of financial burden from the Union for payment of opting civii servants who belonged to the Federal Administration, shall take place as follows:

- a. in the sixth year after its creation, the state shall assume twenty percent of the financial burden for the payment of the civil servants, the remainder continuing as a responsibility of the Union;
  - b. in the seventh year, thirty percent shall be added to the burden of the state and, in the eighth year, the remaining fifty percent;
- X. the appointments subsequent to the first ones, for the offices mentioned in this article, shall be regulated by the state Constitution;
- XI. the budgetary personnel expenses shall not exceed fifty percent of the revenues of the state.

**Article 236.** Notary and registration services shall be exercised by private entities by Government delegation.

Paragraph 1 - The law shall regulate the activities, discipline the civil and criminal liability of notaries, registrars and their officials and define the supervision of their acts by the Judicial Power.

Paragraph 2 - Federal law shall set forth general rules for the establishment of the fees for the acts performed by notary and registration services.

Paragraph 3 - The entrance in notary and registration activities shall depend on a public entrance examination of tests and presentation of academic and professional credentials, and an office shall not be permitted to remain vacant for more than six months, without the opening of a public examination to fill it, either by appointment or transference.

**Article 237.** The supervision and control of foreign trade, which are essential to the defense of national financial interests, shall be exercised by the Ministry of Finance.

**Article 238.** The law shall organize the sale and resale of petroleum-derived fuels, fuel alcohol and other fuels derived from renewable raw-materials. respecting the principles of this Constitution.

**Article 239.** The revenues from contributions to the Social Integration Program, created by the Supplementary Law number 7 of September 7, 1970, and to the Civil Servants Asset Development Programme, created by the Supplementary Law number 8, of December 3, 1970, shall, from the date of the promulgation of this Constitution, fund the unemployment insurance programme and the bonus referred to in paragraph 3 of this article, in the manner prescribed by law.

Paragraph 1 - At least forty percent of the funds mentioned in the caption of this article shall be allocated to finance economic development programmes, through the National Economic and Social Development Bank, with remuneration criteria which preserve their value.

Paragraph 2 - The accrued assets of the Social Integration Programme and of the Civil Servants Asset Development Programme shall be preserved, maintaining the criteria for withdrawal in the situations provided for in specific laws, with the exception of withdrawal by reason of marriage, it being forbidden the distribution of the revenues referred to in the caption of this article, for deposit in the personal accounts of the participants.

Paragraph 3 - Employees who receive monthly remuneration of up to two minimum wages from employers who contribute to the Social Integration Programme and to the Civil Servants Asset Development Programme shall be ensured the annual payment of one minimum wage, in which value the income of the individual accounts shall be computed, in the case of those who already participated in such programmes before the date of the promulgation of this Constitution.

Paragraph 4 - Funding of the unemployment insurance programme shall receive an additional contribution from companies in which employee turnover exceeds the average turnover rate of the sector, in the manner established by law.

**Article 240.** The present compulsory contributions calculated on the payroll, made by employers, intended for private social service and professional training entities linked to the labour union system, are excluded from the provisions of article 195.

**Article 241.** The principle of article 39, paragraph 1, corresponding to the careers regulated in article 13 5 of this Constitution, shall apply to career police officers.

**Article 242.** The principle of article 206, IV, shall not apply to the official educational institutions created by state or municipal law and in existence on the date of the promulgation of this Constitution, which are not totally or predominantly maintained with Public funds.

Paragraph 1 - The teaching of Brazilian History shall take into account the contribution of the different cultures and ethnic groups to the formation of the Brazilian people.

Paragraph 2 - The Pedro II School, located in the city of Rio de Janeiro, shall be maintained in the federal sphere.

**Article 243.** Tracts of land in any region of the country where illegal plantations of psychotropic plants are found shall be expropriated immediately and specifically assigned to the settlement of tenant farmers, to the culture of foodstuffs and medicinal products, with no indemnity to the owner and without prejudice to other sanctions set forth by law.

Sole paragraph - Any and all good of economic value seized as a result of illegal traffic or narcotics and similar drugs shall be confiscated and reverted to the benefit of institutions and personnel specialized in the treatment and cure of drug-addicts and in the equipping and funding of supervision, control, prevention and repression of drug traffic crime.

**Article 244.** The law shall provide for the adaptation of presently existing sites and buildings of public use and of the public transportation vehicles in order to guarantee adequate access to the handicapped, as set forth in article 227, paragraph 2.

**Article 245.** The law shall provide for the cases and conditions in which the Government shall give assistance to the needy heirs and dependants of victims of willful crimes, without prejudice to the civil responsibility of the perpetrator of the offense.

**\*Article 246.** *The adoption of any provisional measure for the regulation of any article of the Constitution the wording of which has been altered by means of an amendment enacted as of 1995 is forbidden.*

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Brasília, October 5, 1988. - *Ulysses Guimardies*, President - *Mauro Benevides*, First Vice-President - *Jorge Arbage*, Second Vice-President - *Marcelo Cordeiro*, First Secretary - *Mário Maia*, Second Secretary - *Arnaldo Faria de Sá*, Third Secretary - *Benedita da Silva*, First Substitute Secretary - *Luiz Soyer*, Second Substitute Secretary - *Sotero Cunha*, Third Substitute Secretary - *Bernardo Cabral*, Reporter-General - *Adolfo Oliveira*, Adjunct Reporter - *Antonio Carlos Konder Reis*, Adjunct Reporter - *José Fogaça*, Adjunct Reporter - *Abigail Feitosa* - *Acival Gomes* - *Adauto Pereira* - *Ademir Andrade* - *Adhemar de Barros Filho* - *Adroaldo Streck* - *Adylson Motta* - *Aécio de Borba* - *Aécio Neves* - *Affonso Camargo* - *Afif Domingos* - *Afonso Arinos* - *Afonso Sancho* - *Agassiz Almeida* - *Agripino de Oliveira Lima* - *Airton Cordeiro* - *Airton Sandoval* - *Alarico Abib* - *Albano Franco* - *Albérico Cordeiro* - *Albérico Filho* - *Alceni Guerra* - *Alcides Saldanha* - *Aldo Arantes* - *Alércio Dias Alexandre Costa* - *Alexandre Puzyna* - *Alfredo Campos* - *Almir Gabriel Aloisio Vasconcelos* - *Aloysio Chaves* - *Aloysio Teixeira* - *Aluizio Bezerra Aluizio Carnpos* - *Álvaro Antônio* - *Álvaro Pacheco* - *Álvaro Valle* - *Alysson Paulinelli* - *Amaral Netto* - *Amaury Mueller* - *Amilcar Moreira* - *Angelo Magalhães* - *Anna Maria Rattes* - *Annibal Barcellos* - *Antero de Barros* - *Antônio Câmara* - *Antônio Carlos Franco* - *Antonio Carlos Mendes Thame* - *Antônio de Jesus* - *Antonio Ferreira* - *Antonio Gaspar* - *Antonio Mariz* - *Antonio Perosa* - *Antônio Salim Curiati* - *Antonio Ueno* - *Arnaldo Alartins* - *Arnaldo Moraes* - *Arnaldo Prieto* - *Arnold Fioravante* - *Arolde de Oliveira* - *Artenir Werner* - *Artur da Távola* - *Asdrubal Bentes* - *Assis Canuto* - *Átila Lira* - *Augusto Carvalho* - *Áureo Mello* - *Basílio Viliani* - *Benedicto Monteiro* - *Benito Gama* - *Beth Azize* - *Bezerra de Melo* - *Bocayuva Cunha* - *Bonifácio de Andrada* - *Bosco França* - *Brandão Monteiro* - *Caio Pompeu* - *Carlos Alberto* - *Carlos Alberto Caó* - *Carlos Benevides* - *Carlos Cardinal* - *Carlos Chiarelli* - *Carlos Cotta* - *Carlos De'Carli* - *Carlos Moscon* - *Carlos Sant'Anna* - *Carlos Vinagre* - *Carlos Vigílio* - *Carrel Benevides* - *Cássio Cunha Lima* - *Célio de Castro* - *Celso Dourado* - *César Cals Neto* - *César Maia* - *Chagas Duarte* - *Chagas Neto* - *Chagas Rodrigues* - *Chico Humberto* - *Christóvam Chiaradia* - *Cid Carvalho* - *Cid Sabóia de Carvalho* - *Cláudio Ávila* - *Cleonâncio Fonseca* - *Costa Ferreira* - *Cristina Tavares* - *Cunha Bueno* - *Dálton Canabrava* - *Darcy Deitos* - *Darcy Pozza* - *Daso Coimbra Davi Alves Silva* - *Del Bosco Amaral* - *Delfim Netto* - *Délio Braz* - *Denisar Arneiro* - *Dionisio Dal Prá* - *Dionísio Hage* - *Dirce Tutu Quadros* - *Dirceu Carneiro* - *Divaldo Suruagy* - *Djenal Gonçalves* - *Domingos Juvenil* - *Domingos Leonelli* - *Doreto Campanari* - *Edésio Frias* - *Edison Lobão* - *Edivaldo Motta* - *Edme Tavares* - *Edmilson Valentim* - *Eduardo Bonfim* - *Eduardo Jorge* - *Eduardo Moreira* - *Egídio Ferreira Lima* - *Elias Murad Eliel Rodrigues* - *Eliézer Moreira* - *Enoc Vieira* - *Eraldo Tinoco* - *Eraldo Trindade* - *Erico Pegoraro* - *Ervin Bonkoski* - *Etevaldo Nogueira* - *Euclides Scalco* - *Eunice Michiles* - *Evaldo Gonçalves* - *Expedito Machado* - *Ézio Ferreira* - *Fábio Feldmann* - *Fábio Raunheitti* - *Farabulini Júnior* - *Fausto Fernandes* - *Fausto Rocha* - *Felipe Mendes* - *Feres Nader* - *Fernando Bezerra Coelho* - *Fernando Cunha* - *Fernando Gasparian* - *Fernando Gomes* - *Fernando Henrique Cardoso* - *Fernando Lyra* - *Fernando Santana* - *Fernando Velasco* - *Firmo de Castro* - *Flavio Palmier da Veiga* - *Flávio Rocha Florestan Fernandes* - *Floricensio Paixao* - *França Teixeira* - *Francisco Amaral* - *Francisco Benjamim* - *Francisco Carneiro* - *Francisco Coelho* - *Francisco Diógenes* - *Francisco Dornelles* - *Francisco Kuster* - *Francisco Pinto* - *Francisco Rollemberg* - *Francisco Rossi* - *Francisco Sales* - *Fursado Leite* - *Gabriel Guerreiro* - *Gandi Jamil* - *Gastone Righi* - *Genebaldo Correia* - *Genésio Bernardino* - *Geovani Borges* - *Geraldo Alekmin Filho* - *Geraldo Bulhões* - *Geraldo Campos* - *Geraldo Fleming* - *Geraldo Melo* - *Gerson Camata* - *Gerson Marcondes* - *Gerson Peres* - *Gidel Dantas* - *Gil César* - *Gilson Machado* - *Gonzaga Patriota* - *Guilherme Palmeira* - *Gumerindo Milhomem* - *Gustavo de Faria* - *Harlan Gadelha* - *Haroldo Lima* - *Haroldo Sabóia* - *Hélio Duque* - *Hélio Manhães* - *Hélio Rosas* - *Henrique Córdova* - *Henrique Eduardo Alves* - *Heráclito Fortes* - *Hermes*

Zaneti - Hilário Braun - Homero Santos - Humberto Lucena - Humberto Souto - Iberê  
Ferreira - Ibsen Pinheiro - Inocêncio Oliveira - Irajá Rodrigues - Iram Saraiva - Irapuan  
Costa Júnior - Irma Passoni - Ismael Wanderley - Israel Pinheiro- Itamar Franco - Ivo  
Cersósimo - Ivo Lech - Ivo Mainardi - Ivo Vanderlinde - Jacy Scanagatta - Jairo Azi - Jairo  
Careiro - Jalles Fontoura - Jamil Haddad - Jarbas Passarinho - Jayme Paliarin - Jayme  
Santana - Jesualdo Cavalcanti - Jesus Tajra - Joaci Góes - João Agripino - João Alves -  
João Calmon - João Carlos Bacelar - João Castelo - João Cunha - João da Mata - João  
de Deus Antunes - João Herrman Neto - João Lobo -João Machado Rollemberg - João  
Menezes - João Natal - João Paulo - João Rezek - João Bevilacqua - Joaquim Francisco -  
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Jorge Bornhausen - Jorge Hage - Jorge Leite - Kprge Ueques - Jorge Vianna - José  
Agripino - José Camargo - José Carlos Coutinho - José Carlos Grecco - José Carlos  
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José Dutra - José Egreja - José Elias - José Fernandes - José Freire - José Genoíno -  
José Geraldo - José Guedes - José Ingnácio Ferreira - José Jorge - José Lins - José  
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Queiroz - José Richa - José Santana de Vasconcellos -José Serra - José Tavares - José  
Teixeira - José Thomaz Nonô - José Tinoco - José Ulisses de Oliveira - José Viana - José  
Yunes - Jovanni Masini - Juarez Antunes - Júlio Campos - Júlio Costamilan - Jutahy  
Júnior - Jutahy Magalhães - Koyu Iha - Lael Varella - Lavoisier Maia - Leite Chaves - Lélío  
Souza - Leopoldo Peres - Leur Lomanto - Levy Dias - Lézio Sathler - Lidice da Mata -  
Louremberg Nunes Rocha - Lourival Baptista - Lúcia Braga - Lúcia Vânia - Lúcio Alcântara  
- Luis Eduardo - Luis Roberto Ponte - Luiz Alberto Rodrigues - Luiz Freire - Luiz Gushiken  
- Luiz Henrique - Luiz Inácio Lula da Silva - Luiz Leal - Luiz Marques - Luiz Salomão - Luiz  
Viana - Luiz Viana Neto - Lysânea Maciel - Maguito Vilela - Maluly Neto - Manoel Castro -  
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- Márcio Braga - Márcio Lacerda - Marco Maciel - Marcondes Gadelha - Marcos Lima -  
Marcos Queiroz - Maria de Lourdes Abadia - Maria Lúcia - Mário Assad - Mário Covas -  
Mário de Oliveira - Mário Lima - Marluce Pinto - Matheus Iensen - Mattos Leão - Maurício  
Campos - Maurício Correa - Maurício Fruet - Maurício Nasser - Maurício Pádua - Maurílio  
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Rosenmann - Meira Filho - Melo Freire - Mello Reis - Menes Botelho - Mendes Canale -  
Mendes Ribeiro - Messias Góis - Messias Soares - Michel Temer - Milton Barbosa - Milton  
Lima - Milton Reis - Miraldo Gomes - Miro Teixeira - Moema São Thiago - Moysés  
Pimentel - Mazarildo Cavalcanti - Mussa Demes - Myrian Portella - Nabor Júnior - Naphtali  
Alves de Souza - Narciso Mendes - Nelson Aguiar - Nelson Carneiro - Nelson Jobim -  
Nelson Sabrá - Nelson Seixas - Nelson Wedekin - Nelton Friedrich - Nestor Duarte - Ney  
Maranhão - Nilso Sguarezi - Mlson Gibson - Nion Albernaz - Noel de Carvalho - Nyder  
Barbosa - Octávio Elísio - Odacir Soares- Olavo Pires- Olívio Dutra- Onofre Corrêa -  
Orlando Bezerra - Orlando Pacheco - Oscar Corrêa - Osmar Leitão - Osmir Lima -  
Osmundo Rebouças - Osvaldo Bender - Osvaldo Coelho - Osvaldo Macedo - Osvaldo  
Sobrinho - Oswaldo Almeida - Oswaldo Trevisan - Ottomar Pinto - Paes de Andrade -  
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Paulo Silva - Paulo Zarzur - Pedro Canedo - Pedro Ceolin - Percival Muniz - Pimenta da  
Veiga - Plínio Arruda Sampaio - Plínio Martins - Pompeu de Sousa - Rachid Saldanha  
Derzi - Raimundo Bezerra - Raimundo Lira - Raimundo Rezende - Raquel Cândido -  
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Renato Johnsson - Renato Vanna - Ricardo Fiuza - Ricardo Izar - Rita Camata - Rita  
Furtado - Roberto Augusto - Roberto Balestra - Roberto Brant - Roberto Campos -

*Roberto D'Ávila - Roberto Freire - Roberto Jefferson - Roberto Rollemberg - Roberto Torres - Roberto Vital - Robson Marinho - Rodrigues Palma - Ronaldo Aragão - Ronaldo Carvalho - Ronaldo Cezar Coelho - Ronan Tito - Ronaro Corrêa - Rosa Prata - Rose de Freitas - Rospide Netto - Rubem Branquinho - Rubem Medina - Ruben Figueiró - Ruberval Pilotto - Ruy Bacelar - Ruy Nedel - Sadie Hauache - Salatiel Carvalho - Samir Achôa - Sandra Cavalcanti - Santinho Furtado - Sarney Filho - Saulo Queiroz - Sérgio Brito - Sérgio Spada - Sérgio Werneck - Severo Gomes - Sigmaringa Seixas - Sílvio Abreu - Simão Sessim - Siqueira Campos - Sólon Borges dos Reis - Stélio Dias - Tadeu França - Telmo Kirst -- Teotônio Vlela Filho - Theodoro Mendes - Tito Costa - Ubiratan Aguiar - Ubiratan Spinelli - Uldurico Pinto - Valmir Campelo - Valter Pereira - Vasco Alves - Vicente Bogo - Victor Faccioni - Victor Fontana - Victor Trovdo - Vieira da Silva - Vilson Souza - Vingt Rosado - Vinicius Cansanção - Vrgildásio de Senna - Virgílio Galassi - Virgílio Guimarães - Vitor Buaiz - Vivaldo Barbosa - Vladimir Palmeira - Wagner Lago - Waldec Ornêlas - Waldyr Pugliesi - Walmor de Luca - Wilma Maia - Wilson Campos - Wilson Martins - Ziza Valadares.*

*PARTICIPANTS: Álvaro Dias - Antônio Britto - Bete Mendes - Borges da Silveira - Cardoso Alves - Edivaldo Holanda - Expedito Júnior - Fadah Gattass - Francisco Dias - Geovah Amarante - Hélio Gueiros - Horácio Ferraz - Hugo Napoleão - Iturival Nascimento - Ivan Bonato - Jorge Medauar - José Mendonça de Moraes - Leopoldo Bessone - Marcelo Miranda - Mauro Fecury - Neuto de Conto - Nivaldo Machado - Oswaldo Lima Filho - Paulo Almada - Prisco Viana - Ralph Biasi - Rosário Congro Neto - Sérgio Naya - Tidei de Lima.*

*IN MEMORIAM: Alair Ferreira - Antônio Farias - Fábio Lucena - Norberto Schwantes - Virgílio Távora.*

## **TEMPORARY CONSTITUTIONAL PROVISIONS ACT**

**Article 1.** The President of the Republic, the President of the Supreme Federal Court and the members of the National Congress shall take an oath to maintain, defend and comply with the Constitution, upon and on the date of the promulgation thereof.

**Article 2.** On September 7, 1993, the voters shall define, through a plebiscite, the form (republic or constitutional monarchy and system of government (parliamentary or presidential) to be in force in Brazil.

Paragraph 1 - The free diffusion of these forms and systems through public utility mass communication vehicles shall be free of charge.

Paragraph 2 - The Superior Electoral Court shall, upon promulgation of the Constitution, issue the regulatory rules for this article.

**Article 3.** The revision of the Constitution shall be effected after five years as of its promulgation, by the vote of the absolute majority of the members of the National Congress in a unicameral session.

**Article 4.** The term of office of the incumbent President of the Republic shall end on March 15, 1990.

Paragraph 1 - The first election for President of the Republic after promulgation of the Constitution shall be held on November 15, 1989, and the provisions of article 16 of the Constitution shall not apply thereto.

Paragraph 2 - The irreducibility of the present representation of the states and the Federal District in the Chamber of Deputies is ensured

Paragraph 3 - The terms of office of the Governors and of the Vice-Governors elected on November 15, 1986 shall end on March 15, 1991.

Paragraph 4 - The terms of office of the present Mayors, Vice-Mayors and City Councilmen shall end on January 1, 1989, with the inauguration of those elected.

**Article 5.** The provisions of article 16 and the rules of article 77 of the Constitution do not apply to the elections scheduled for November 15 198X

Paragraph 1 - For the elections of November 15, 1988, an electoral domicile in the electoral district of at least four months prior to the election shall be required, and the candidates who fulfill this requirement and satisfy the other legal requisites may register with the Electoral Courts after the Constitution is promulgated.

Paragraph 2 - In the absence of a specific legal rule, it shall be incumbent upon the Superior Electoral Court to issue the rules required to hold the 198B elections, with due regard for the laws in force.

Paragraph 3 - Present Federal Congressmen and State Representatives elected for the office of Vice-Mayor, if called to exercise the office of Mayor, shall not lose their parliamentary office.

Paragraph 4 - The number of Councilmen per municipality shall be determined, for the representation to be elected in 1988, by the respective Regional Electoral Court, with due regard for the limits established in article 29, IV, of the Constitution.

Paragraph 5 - For the elections to be held on November 15, 1988, except for those who already hold an elective office, the spouse and relatives by blood or marriage up to the second degree or relatives by adoption of the President of the Republic, of a State Governor, or the Governor of the Federal District and of a Mayor who have served more than half of their term of office, are ineligible for any office within the jurisdiction of the office holder.

**Article 6.** Federal Congressmen may, during the six months following the promulgation of the Constitution, and forming a group of at least thirty, request from the Superior Electoral Court the registration of a new political party, the petition to be accompanied by the respective manifest, the by-laws and the programme duly signed by the petitioners.

Paragraph 1 - The provisional registration, which shall be promptly granted by the Superior Electoral Court, according to this article, grants to the new party all rights, duties and prerogatives of the existing parties, among which the right to take part, under its own name, in the elections to be held during the twelve months following its formation.

Paragraph 2 - The new party shall automatically lose its provisional registration if, within twenty-four months of its formation, it fails to obtain the final registration at the Superior Electoral Court, as established by law.

**Article 7.** Brazil shall strive for the creation of an international court of human rights.

**Article 8.** Amnesty is granted to those who, during the period from September 18, 1946, to the date the Constitution is promulgated, have been affected exclusively for political reasons, by institutional or supplementary acts of exception, to those encompassed in Legislative Decree No. 18, of December 15, 1961, and to those affected by Decree-Law No. 846, of September 12 1969, ensuring the promotions, in their inactivity, to the office, position or rank to which they would be entitled if they were in active service. with due regard for the periods of continuous activity set forth in laws and regulations in force, respecting the characteristics and peculiarities of the careers-of civil and military public servants and complying with the respective legal regimes.

Paragraph 1 - The provisions of this article shall only generate financial effects as from the promulgation of the Constitution, any kind of retroactive compensation being forbidden.

Paragraph 2 - The benefits established in this article are ensured to workers of the private sector, union officers and representatives who, for exclusively political reasons, have been punished, dismissed or compelled to leave the remunerated activities they had been performing, as well as to those who have been prevented from performing their professional activities by virtue of ostensive pressures or secret official procedures.

Paragraph 3 - Reparation of economic nature shall be granted, as set forth by a law to be proposed by the National Congress and to become effective within twelve months counted from the promulgation of the Constitution, to citizens who were prevented from performing, as civilians, a specific professional activity by virtue of Reserved Ordinances of the Ministry of the Air Force No. S-50-GM5 of June 19, 1964, and No. S-285-GM5.

Paragraph 4 - To those who, by virtue of institutional acts, have gratuitously exercised elective offices of city councilmen, the respective periods shall be computed for purposes of social security and retirement from civil service.

Paragraph 5 - The amnesty granted under this article applies to civil servants and to employees at all levels of government or at its foundations, state-owned companies or mixed capital companies under state control, except in the military Ministries, who have been punished or dismissed from professional activities interrupted by decision of their employees, as well as by virtue of Decree-Law No. 1,632, of August 4, 1978, or for exclusively political reasons, the readmission of those affected as from 1979 being ensured, with due regard for the provisions of paragraph 1.

**Article 9.** Those who, for exclusively political reasons, were disfranchised or had their political rights suspended during the period from July 15 to December 31, 1969, by an act of the then President of the Republic, may request the Supreme Federal Court to acknowledge the rights and advantages interrupted by the punitive acts, provided that they prove that such acts were marked by gross flaws.

Sole paragraph - The Supreme Federal Court shall pronounce its decision within one hundred and twenty days as from the request of the interested party.

**Article 10.** Until the supplementary law referred to in article 7, I, of the Constitution is promulgated:

- I. the protection referred to therein is limited to the increase, to four times, of the percentage set forth in article 6, caption and paragraph I, of the Law No. 5,107 of September 13, 1966;
- II. arbitrary dismissal or dismissal without just cause is prohibited:
  - a. of an employee elected to an executive office of internal accident prevention committees, from the date of the registration of his candidacy to one year after the end of his term of office;
  - b. of a pregnant employee, from the date the pregnancy is confirmed to five months after delivery.

Paragraph 1 - Until such time as the law shall regulate the provisions of article 7, XIX of the Constitution, the period of paternity leave referred to in the item is of five days.

Paragraph 2 - Until further legal provisions are established, the contributions to fund the activities of rural unions shall be collected together with the rural property tax, by the same collecting agency.

Paragraph 3 - Upon the first proof of fulfillment of labour obligations by rural employers, as established by article 233, after the promulgation of the Constitution, the conformity of the contract to the law and of the connection of the labour obligations over the entire period shall be certified before the Labour Courts.

**Article 11.** Each Legislative Assembly endowed with constituent powers, shall draft the State Constitution within one year as from the promulgation of the Federal Constitution, with due regard for the principles of the latter.

Sole paragraph - After the promulgation of the State Constitution, it shall be incumbent upon the City Council, within six months, to vote the respective Organic Law, in two rounds of discussion and voting, with due regard for the provisions of the Federal and state Constitutions.

**Article 12.** Within ninety days of the promulgation of the Constitution, a Land Studies Committee shall be created, with ten members nominated by the National Congress and five members by the Executive Power, for the purpose of submitting studies concerning the national territory and draft bills regarding new territorial units, particularly in the Legal Amazonian Region and in areas pending solution.

Paragraph 1 - Within one year the Committee shall submit the results of its studies to the National Congress so that, in accordance with the Constitution, such studies may be examined during the twelve subsequent months, the committee being dissolved shortly thereafter.

Paragraph 2 - The states and the municipalities shall, within three years of the promulgation of the Constitution, provide, by agreement or adjustment, for the demarcation

of their borders presently in litigation, and they may for such purpose effect area alterations and compensations which allow for natural phenomena, historical criteria, administrative ease and convenience of the bordering populations.

Paragraph 3 - At the request of the interested states and municipalities, the Union may undertake the demarcation work.

Paragraph 4 - If, three years after the promulgation of the Constitution, the demarcation work has not been completed, the Union shall determine the borders of the areas under litigation.

Paragraph 5 - The present borders of the state of Acre with the states of Amazonas and Rondonia are hereby recognized and ratified according to cartographic and geodesic surveys conducted by the Tripartite Committee formed by representatives of the states and of the specialized technical services of the Brazilian Institute of Geography and Statistics

**Article 13.** The state of Tocantins is created by separation of the area described in this article and its installation shall occur on the forty-sixth day after the election provided for in paragraph 3, but not before January 1. 1989.

Paragraph 1 - The state of Tocantins is part of the Northern Region and borders with the state of Goiás along the northern boundaries of the municipalities of S30 Miguel do Araguaia, Porangatu, Formoso, Minaçu, Cavalcante, Monte Alegre de Goiás and Campos Belos, maintaining the present eastern, northern and western borders of Goiás with the states of Bahia, Piauí, Maranhão, Pará and Mato Grosso.

Paragraph 2 - The Executive Power shall designate one of the cities of the state as its provisional capital until such time as the final seat of government is approved by the Constituent Assembly.

Paragraph 3 - The Governor, the Vice-Governor, the Senators and the Federal and State Deputies shall be elected, in a single voting, within seventy- five days after the promulgation of the Constitution, but not before November 15, 1988, at the discretion of the Superior Electoral Court, with due regard, among others, for the following rules:

- I. the deadline for affiliation of the candidates to the parties shall end seventy-five days prior to the date of the elections;
- II. the dates for the regional party conventions for the purpose of deciding upon coalitions and choice of candidates, for the presentation of the application for registration of the candidates chosen and for the other legal procedures shall be determined by the Electoral Courts in a special schedule;
- III. the holders of state or municipal offices who have not left such offices on a definitive basis seventy-five days prior to the date of the elections provided for in this paragraph shall be ineligible;
- IV. the present regional committees of the political parties of the state of Goiás are maintained, it being incumbent upon the national executive committees to appoint provisional committees for the state of Tocantins, in accordance with and for the purposes established by law.

Paragraph 4 - The terms of office of Governor, Vice-Governor and Federal and State Deputies elected in accordance with the preceding paragraph shall end concurrently with those of the other units of the Federation; the term of office of the least voted elected Senator shall end on the same occasion and the terms of office of the other two Senators shall end together with those of the Senators elected in 1986 in the other states.

Paragraph 5 - The State Constituent Assembly shall be installed on the forty-sixth day as from the election of its members, but not before January 19 1989, under the chairmanship of the President of the Regional Electoral Court of the state of Goiás, and shall on the same date inaugurate the elected Governor and Vice-Governor.

Paragraph 6 - The legal rules regulating the division of the state of Mato Grosso shall apply, where appropriate, to the creation and installation of the state of Tocantins with due regard for the provisions of article 234 of the Constitution.

Paragraph 7 - The state of Goiás shall be released from debts and burdens resulting from undertakings within the territory of the new state, and the Union is authorized, at its discretion, to take over such debts.

**Article 14.** The federal territories of Roraima and of Amapá are transformed into federated states, their present geographic borders being maintained.

Paragraph 1 - The installation of the states shall occur upon the inauguration of the governors elected in 1990.

Paragraph 2 - The rules and criteria adopted for the creation of the state of Rondonia shall apply to the transformation and installation of the states of Roraima and Amapá, with due regard for the provisions of the Constitution and of the Act

Paragraph 3 - The President of the Republic shall, within forty-five days of the promulgation of the Constitution, submit for examination by the Federal Senate the names of the governors of the states of Roraima and Amapá who shall exercise the Executive Power until the new states are installed with the inauguration of the elected governors.

Paragraph 4 - Until the transformation into states is effected according to this article, the federal territories of Roraima and Amapá shall enjoy the benefits of transfer of funds provided for in article 159, I, a, of the Constitution and article 34, paragraph 2, II, of this Act.

**Article 15.** The Federal Territory of Fernando de Noronha is extinguished and its area reincorporated into the state of Pernambuco.

**Article 16.** Until the provisions of article 32, paragraph 2, of the Constitution are implemented, it shall be incumbent upon the President of the Republic, with the approval of the Federal Senate, to appoint the Governor and Vice-Governor of the Federal District.

Paragraph 1 - The authority of the Legislative Chamber of the Federal District shall, until such time as it is installed, be exercised by the Federal Senate

Paragraph 2 - The accounting, financial, budgetary, operational and property supervision of the Federal District shall, until such time as the Legislative Chamber is installed, be carried out by the Federal Senate, by means of external control, with the assistance of the Court of Accounts of the Federal District, with due regard for the provisions of article 72 of the Constitution.

Paragraph 3 - The assets of the Federal District shall include those which may be assigned to it by the Union as established by law.

**Article 17.** Earnings, compensation, advantages and additional pay, as well as retirement pensions which are being received in disagreement with this Constitution, shall be reduced immediately to the limits arising therefrom, it not being allowed, in this case, to invoke a vested right or receipt of excess on any account.

Paragraph 1 - It is ensured the cumulative occupation of two medical offices or jobs that are held by a military physician in the direct or indirect government administration.

Paragraph 2 - The cumulative occupation of two offices or jobs reserved for health professionals is ensured if held in the direct or indirect government administration.

**Article 18.** The legal effects of any legislative or administrative act drawn up as of the installation of the National Constituent Assembly, with the objective of granting tenure to a public servant admitted without a public entrance examination to the direct or indirect administration, including the foundations instituted and maintained by the Government, shall be extinguished.

**Article 19.** Civil public servants of the Union, the states, the Federal District and the municipalities, of the direct administration, autonomous government entities and government foundations, who, on the date of promulgation of the Constitution, have been in office for at least five continuous years, and who have not been admitted as established in article 37 of the Constitution, are deemed to have tenure in the public service.

Paragraph 1 - The period of service of the civil servants referred to in this article shall be considered as a credential when they take a competitive examination for the purpose of acquiring tenure. as set forth by law.

Paragraph 2 - The provisions of this article do not apply to the holders of trust or commission functions and jobs nor to those who are legally subject to free discharge, whose period of service shall not be computed for the purposes of the caption of this article, exception being made for public servants.

Paragraph 3 - The provisions of this article shall not apply to higher education professors as set forth by law.

**Article 20.** Within one hundred and eighty days, the rights of inactive public servants and pensioners shall be revised and the income and pensions owed to them shall be updated in order to adjust them to the provisions of the Constitution.

**Article 21.** Judges vested in office for a limited period of time, who have been admitted by means of a public entrance examination of tests and presentation of academic and

professional credentials and who are in office on the date this Constitution is promulgated, shall achieve tenure with due regard for the probation period and they shall become part of a staff in extinction, maintaining the authority, prerogatives and restrictions of the laws to which they were subject, except for those inherent to the temporary nature of their investiture.

Sole paragraph - The retirement of the judges referred to in this article shall be regulated by the rules established for other state judges.

**Article 22.** Public defenders vested in office before the date of installation of the National Constituent Assembly are ensured the right to opt for the career, complying with the guarantees and prohibitions set forth in article 134, sole paragraph, of the Constitution.

**Article 23.** Until such time as the regulations of article 21, XVI of the Constitution are issued, the present holders of the office of federal censor shall continue to exercise functions compatible with such office in the Federal Police Department, with due regard for the constitutional provisions.

Sole paragraph - Such law shall provide for the reassignment of the Federal Censors as set forth in this article.

**Article 24.** The Union, the states, the Federal District and the municipalities shall issue laws establishing criteria to make their staffs compatible with the provisions of article 39 of the Constitution and with the administrative reorganization resulting therefrom, within eighteen months as from the promulgation of the Constitution.

**Article 25.** As of one hundred and eighty days after the promulgation of the Constitution, such period being subject to extension by law, all legal provisions which confer on or delegate to an agency of the Executive Power authority assigned to the National Congress by the Constitution shall be revoked, especially those referring to:

- I. normative action;
- II. allocation or transfer of funds of some kind.

Paragraph 1 - The decree-laws pending before the National Congress and not examined by it before the Constitution is promulgated shall have their effects regulated as follows:

- I. if issued up to September 2, 1988, they shall be examined by the National Congress within one hundred and eighty days as from the date of the promulgation of the Constitution, not counting the parliamentary recess;
- II. if the time limit defined in the preceding item elapses without the decree-laws mentioned therein having been examined, they shall be considered rejected;
- III. in the cases defined in items I and II, the acts performed during the effectiveness of the respective decree-laws shall be fully valid and the National Congress may, if necessary, legislate on their remaining effects.

Paragraph 2 - The decree-laws issued between September 3, 1988 and the date of the promulgation of the Constitution shall be converted on such date into provisional measures, with the rules established in article 62, sole paragraph, being applied thereto.

**Article 26.** Within one year of promulgation of the Constitution, the National Congress shall effect, through a joint committee, an analytical and expert examination of the acts and facts which generate the Brazilian foreign indebtedness.

Paragraph 1 - The Committee shall have the legal authority of a parliamentary investigation committee for purposes of requisition and summons, and shall act with the assistance of the Court of Accounts of the Union.

Paragraph 2 - If irregularities are found, the National Congress shall propose that the Executive Power declare the act null and void and shall forward the case to the Federal Public Prosecution, which shall take the appropriate action within sixty days.

**Article 27.** The Superior Court of Justice shall be installed under the Presidency of the Supreme Federal Court.

Paragraph 1 - Until such time as the Superior Court of Justice is installed, the Supreme Federal Court shall perform the duties and responsibilities defined in the previous constitutional order.

Paragraph 2 - The initial composition of the Superior Court of Justice shall be obtained

- I. by reassignment of Justices of the Federal Court of Appeals;
- II. by appointment of the Justices required to complete the number established in the Constitution.

Paragraph 3 - For the purposes of the Constitution, the present Justices of the Federal Court of Appeals shall be considered as belonging to the class they came from at the time of their appointment.

Paragraph 4 - Once the Court has been installed, the retired Justices of the Federal Court of Appeals shall automatically become retired Justices of the Superior Court of Justice.

Paragraph 5 - The Justices referred to in paragraph 2, II, shall be nominated in a triple list by the Federal Court of Appeals, with due regard for the provisions of article 104, sole paragraph, of the Constitution.

Paragraph 6 - Five Federal Regional Courts of Justice are hereby created, to be installed within six months of the promulgation of the Constitution, with the jurisdiction and seat assigned to them by the Federal Court of Appeals. taking into account the number of lawsuits and their geographical location.

Paragraph 7 - Until such time as the Federal Regional Courts of Justice are installed, the Federal Court of Appeals shall exercise the authority attributed to them throughout the national territory, it being incumbent upon it their installation and nomination of candidates for all initial offices by means of a triple list which may include federal judges of any region, with due regard for the provisions of paragraph 9.

Paragraph 8 - As from promulgation of the Constitution, it is forbidden to fill vacant offices of Justices of the Federal Court of Appeals.

Paragraph 9 - If there is no federal judge with the minimum period of service set forth in article 107, II, of the Constitution, the promotion may be granted to a judge with less than five years of office.

Paragraph 10 - It is incumbent upon the Federal Courts to judge the lawsuits filed therein until such time as the Constitution is promulgated, and the Federal Regional Courts as well as the Superior Court of Justice shall judge the rescissory actions for the decisions rendered until then by the Federal Courts, including those which refer to matters for which competence has been transferred to another branch of the Judicial Power.

**Article 28.** The federal judges referred to in article 123, paragraph 2, of the Constitution of 1967, with the wording given by the Constitutional Amendment No. 7 of 1977, shall be vested in office in courts of the judiciary section for which they were appointed or designated; if there are no vacancies, the existing courts shall be divided.

Sole paragraph - For purposes of promotion for seniority, the period of service of such judges shall be computed as from the day of their taking of office.

**Article 29.** Until such time as the supplementary laws relating to the Public Prosecution and to the Advocacy-General of the Union are approved, the Federal Public Prosecution, the Office of the Attorney-General of the National Treasury the Legal Consultancies of the Ministries, the Prosecution and Legal Departments of the federal autonomous government agencies having their own representation, and the members of the Prosecution Offices of public foundation universities shall continue to conduct their activities within their respective incumbencies.

Paragraph I - The President of the Republic shall, within one hundred and twenty days, submit to the National Congress a bill of supplementary law dealing with the organization and operation of the Advocacy-General of the Union.

Paragraph 2 - The present Prosecutors of the Republic may, in accordance with the supplementary law, opt irrevocably between the careers of the Federal Public Prosecution and of the Advocacy-General of the Union

Paragraph 3 - A member of the Public Prosecution admitted prior to the promulgation of the Constitution may opt for the previous regime insofar as guarantees and advantages are concerned, with due regard, as to prohibitions. for the legal status on the date of such promulgation.

Paragraph 4 - The present members of the supplementary staff of the Labour and Military Public Prosecutions, who have acquired tenure in these functions! shall belong to the staff of the respective career

Paragraph 5 - It is incumbent upon the present Office of the Attorney General of the National Treasury, directly or by delegation, which may be added to the State Public Prosecution, to represent the Union in court in lawsuits a fiscal nature, In their respective spheres of authority, until such time as the supplementary laws set forth in this article are promulgated.

**Article 30.** The legislation which creates the justiceship of the peace shall maintain the present judges of the peace until the new judges take office. ensuring them the rights and duties conferred on the latter and shall establish the date for the election provided for in article 98, 11, of this Constitution.

**Article 31.** The clerical offices of the judicial courts, as defined in law, shall be brought under stale control, with due regard for the rights of the present clerks.

**Article 32.** The provisions of article 236 shall not apply to notary and registration services which have already been made official by the Government with due regard for the rights of their servants.

**Article 33.** With the exception of credits for alimony the amount due by virtue of court orders for which payment is outstanding on the date of the promulgation of the Constitution, therein included remaining interests and adjustment for inflation, may be paid in legal tender, with readjustments, in equal and successive annual instalments, within eight years at the most, counted from July 1, 1989, in accordance with a decision by the Executive Power within one hundred and eighty days of the promulgation of the Constitution.

Sole paragraph - In order to comply with the provisions of this article, the debtor entities may issue, each year, for the exact amount of the expenditure, public debt bonds which shall not be computed for purposes of determining the total limit of indebtedness.

**Article 34.** The national tax system shall become effective on the first day of the fifth month following the promulgation of the Constitution, and until then, the system set forth in the 1967 Constitution, with the wording provided by Amendment number I of 1969 and by the subsequent ones, shall be maintained.

Paragraph 1 - With the promulgation of this Constitution, articles 148, 149, 150, 154, I, 156, III and 159, I, c, shall become effective, with all provisions to the contrary in the 1967 Constitution and in the amendments which modified it, especially its article 25, III, being revoked.

Paragraph 2 - The Participation Fund of the States and the Federal District, and the Revenue Sharing Fund of the Municipalities shall obey the following determinations

- I. from the date of the promulgation of the Constitution, the percentages shall be, respectively, of eighteen percent and twenty percent, calculated on the proceeds from the collection of the taxes referred to in article 153, III and IV, the present apportionment criteria being maintained until the supplementary law referred to in article 161, II becomes effective;
- II. the percentage referring to the Participation Fund of the States and the Federal District shall be increased by one percent in the fiscal year of 19' and, as from and including 1990, by one half of one percent per fiscal year until and including 1992, reaching in 1993 the percentage established in article 159, I, a;
- III. the percentage referring to the Participation Fund of the Municipalities, as from and including 1989 shall be increased by one half of one percent per fiscal year until it reaches the limit established in ar. ticle 159, I, b .

Paragraph 3 - Upon the promulgation of this Constitution, the Union, the states, the Federal District and the municipalities may issue the laws which are necessary for the application of the national tax system established therein.

Paragraph 4 - The laws issued in accordance with the preceding paragraph produce effects as from the date the national tax system set forth in the Constitution becomes effective.

Paragraph 5 - Once the new national tax system is in force, the application of the preceding legislation shall be ensured in that in which it is not incompatible with the new system and with the legislation referred to in paragraphs 3 and 4.

Paragraph 6 - Until December 31, 1989, the provisions of article 150, III, b, shall not apply to the taxes referred to in articles 155, I, a and b, and 156, II and III, which may be collected thirty days after the publication of the law which has instituted or increased them.

Paragraph 7 - Until the maximum rates of the municipal tax on retail sales of liquid and gaseous fuels have been established in a supplementary law, such rates shall not exceed three percent.

Paragraph 8 - If, within sixty days counted from the promulgation of the Constitution, the supplementary law required for the institution of the tax referred to in article 155, I, b, has not been issued, the states and the Federal District, by means of an agreement concluded in the manner set forth in Supplementary Law number 24 of January 7, 1975, shall establish the rules to regulate the matter provisionally.

Paragraph 9 - Until a supplementary law provides for the matter, electric power distribution companies, in the capacity of taxpayers or of substitute taxpayers, shall be liable when the product leaves their facilities, even if the destination is another unit of the federation, for the payment of the tax on the circulation of goods levied on electric power, from production or importation to the last operation, such tax being calculated on the price charged on the occasion of the final operation, its collection being ensured to the state or the Federal District, depending on the place where such operation occurs.

Paragraph 10 - Until the law provided by article 159, I, c, which shall be promulgated by December 31, 1989, becomes effective, the application of the funds set forth in that provision shall be ensured in the following manner:

- I. six-tenths of one percent in the Northern Region, through the Banco da Amazonia S.A.:
- II. one and eight-tenths percent in the Northeastern Region, through the Banco do Nordeste do Brasil S.A.:
- III. six-tenths of one percent in the Centre-West Region, through the Banco do Brasil S.A.

Paragraph 11 - The Centre-West Development Bank is hereby created, in the manner established by law, in order to comply, within that region, with the provisions of articles 159, I, c and 192, paragraph 2, of the Constitution.

Paragraph 12 - The urgency provided by article 148, II, shall not preclude the collection of the compulsory loan instituted for the benefit of the Centrais Elétricas Brasileiras S.A. (Eletrobrás) by Law number 4,156 of November 28, 1962, with the subsequent amendments.

**Article 35.** provisions of article 165, paragraph 7, shall be complied with progressively, over a period of ten years, the funds being distributed among the macro-economic regions in proportion to their population, based on the situation verified for the 1986-87 period.

Paragraph 1 - In the application of the criteria referred to in this article, the total expenses shall exclude expenses for:

- I. projects considered as priorities in the pluriannual plan;
- II. national security and defense;
- III. maintenance of the federal agencies in the Federal District;
- IV. the National Congress, the Federal Court of Accounts and the Judicial Power;
- V. the servicing of the debt of the direct and indirect administration of the Union, including foundations instituted and maintained by the Federal Government.

Paragraph 2 - Until the supplementary law referred to in article 165, paragraph 9, I and II, comes into force, the following rules shall be complied with:

- I. the project of the pluriannual plan, to be in force until the end of the first fiscal year of the subsequent presidential term of office, shall be forwarded not less than four months before the end of the first fiscal year and returned for sanction before the end of the legislative session;
- II. the bill of budgetary directives shall be forwarded not less than eight and a half months before the end of the fiscal year and returned for sanction before the end of the first period of the legislative session;
- III. the budget bill of the Union shall be forwarded not less than four months before the end of the fiscal year. and returned for sanction before the end of the legislative session.

**Article 36.** The funds existing on the day the Constitution is promulgated, except for those resulting from tax exemptions which become private property and those which are of interest to national defense, shall be extinguished if they are not ratified by the National Congress within two years.

**Article 37.** Adaptation to the provisions of article 167, III, shall be made within the period of five years, the excess being reduced at a rate of at least one-fifth per year.

**Article 38.** Until the promulgation of the supplementary law referred to in article 169, the Union, the states, the Federal District and the municipalities shall not spend more than sixty-five percent of the amount of the respective current revenues on personnel.

Sole paragraph - The Union, the states, the Federal District and the municipalities, whenever the respective expenditure with personnel exceeds the limit established in this article, shall return to such limit, reducing the excess percentage at a rate of one-fifth per year.

**Article 39.** For purposes of compliance with the constitutional provisions which involve variations of expenses and revenues of the Union, after the promulgation of the Constitution, the Executive Power shall draw up and the Legislative Power shall examine a bill of review of the budgetary law referring to the fiscal year of 1989.

Sole paragraph - The National Congress shall vote within twelve months the supplementary law provided by article 161. II.

**Article 40.** The Free-Trade Zone of Manaus, with its characteristics of free- trade, export and import and fiscal benefits, shall be maintained for a period of twenty-five years as from the promulgation of the Constitution

Sole paragraph - The criteria which regulated or may come to regulate the approval of projects in the Free-Trade Zone of Manaus may only be modified by a federal law.

**Article 41.** The Executive Powers of the Union, the states, the Federal District and the municipalities shall reassess all sectorial tax incentives now in force and shall propose the appropriate measures to the respective Legislative Powers.

Paragraph 1 - The incentives which are not confirmed by law within two years of the promulgation of the Constitution shall be considered revoked.

Paragraph 2 - Revocation shall not preclude any rights which have become vested before that date, in relation to incentives granted under conditions and for a set period of time.

Paragraph 3 - Incentives granted by means of agreements concluded between states, in accordance with article 23, paragraph 6 of the 1967 Constitution, with the wording of Amendment number 1, of October 17, 1969, shall also be reassessed and reconfirmed within the time limits set forth in this article

**Article 42.** Of the funds intended for irrigation, during a period of fifteen years, the Union shall apply:

- I. twenty percent in the Centre-West Region;
- II. fifty percent in the Northeastern Region, preferably in the semi-arid region.

**Article 43.** On the date of the promulgation of the law regulating the prospecting and mining of mineral resources and beds of ore, or within one year counted from the date of the promulgation of the Constitution, the authorizations, grants and other deeds affording mining rights shall become ineffective, in case the prospecting or mining works have not provenly started in the legal time limits or are inactive.

**Article 44.** The Brazilian companies which presently hold valid prospecting authorizations and permits for the mining of mineral resources and the exploitation of hydraulic energy shall have four years, counted from the date of the promulgation of the Constitution, to comply with the requirements of article 176, paragraph 1.

Paragraph I - Except for the provisions of national interest set forth in the constitutional text, Brazilian companies shall be exempt from compliance with the provisions of article 176, paragraph 1, provided that, within four years counted from the date of the

promulgation of the Constitution they have destined the product of their mining and processing activities to industrialization within the national territory, in their own facilities or in a controlling or controlled industrial company.

Paragraph 2 - Brazilian companies which hold a hydraulic energy concession for use in their industrial processes shall also be exempted from compliance with the provisions of article 176, Paragraph 1.

Paragraph 3 - The Brazilian companies referred to in paragraph 1 may only be granted prospecting authorizations or concessions to mine or exploit hydraulic energy potentials provided that the energy and the mining product are used in their respective industrial processes

**Article 45.** Refineries which operate in the country under article 43 and under the conditions of article 45 of Law number 2,004 of October 3, 1953, are excluded from the monopoly established by article 177, II, of the Constitution.

Sole paragraph - Risk contracts entered into with Petróleo Brasileiro S.A. (Petrobrás) for petroleum prospecting, which are effective on the date of the promulgation of the Constitution are exempted from the prohibition of article 177, paragraph 1.

**Article 46.** Credits with institutions under intervention or extrajudicial liquidation, even when such proceedings are converted into bankruptcy, are subject to adjustment for inflation from the date of maturity to the date of actual payment, with no interruption or suspension.

Sole paragraph - The provisions of this article shall also apply to:

- I. transactions made after the proceedings referred to in the caption of this article have been decreed
- II. loan, financing and refinancing transactions, transactions of financial assistance for liquidity purposes, assignment or subrogation of credits or mortgage bonds, guarantee of deposits made by the public, or of purchase of liabilities, including those carried out with funds intended for such purposes:
- III. credits existing prior to the promulgation of this Constitution;
- IV. credits held by public administration entities before the promulgation of this Constitution and not settled by January 1, 1988.

**Article 47.** In the settlement of debts, including their subsequent renegotiation and composition, even when taken to court, arising out of any loans granted by banks and by financial institutions, there shall be no adjustment for inflation, provided that the loan has been granted:

- I. to micro and small businessmen or to their businesses in the period from February 28, 1986, to February 28, 1987:
- II. to mini, small and medium rural producers in the period from February 28, 1986, to December 31, 1987, provided that it refers to rural credit

Paragraph 1 - For the purposes of this article, micro-enterprises shall be considered as the legal entities and individual firms with annual income of up to ten thousand National

Treasury Bonds, and small enterprises as the legal entities and individual firms with annual income of up to twenty-five thousand National Treasury Bonds.

Paragraph 2 - Classification as a mini, small or medium rural producer shall be made in accordance with the rural credit rules in force at the time of the contract.

Paragraph 3 - Exemption from adjustment for inflation referred to in this article shall only be granted in the following cases:

- I. if the initial debt, plus legal interests and judicial fees, are settled within ninety days of promulgation of this Constitution;
- II. if the application of the funds is not contrary to the purpose of the financing, the burden of proof lying with the creditor institution;
- III. if the creditor institution does not show that the borrower has the means to pay his debt, such means excluding the business of the borrower, the house where he lives, as well as his work and production instruments;
- IV. if the initial financing does not exceed the limit of five thousand National Treasury Bonds;
- V. if the beneficiary is not the owner of more than five rural modules.

Paragraph 4 - The benefits referred to in this article shall not be extended to the debts which have already been paid and to debtors who are members of the Constituent Assembly.

Paragraph 5 - In the event of transactions maturing after the deadline for settlement of the debt, should the borrower be interested, the banks and the financial institutions shall effect, by a specific instrument, an amendment to the original conditions of the contract so as to adjust them to this benefit.

Paragraph 6 - The granting of this benefit by private commercial banks shall not, under any circumstances, entail a burden to the Government, even if made by refinancing and on-lending of funds by the central bank.

Paragraph 7 - In the case of on-lending to official financial agents or credit cooperatives, the burden shall fall upon the original source of funds.

**Article 48.** The National Congress, within one hundred and twenty days of the promulgation of this Constitution, shall draw up a consumer defense code.

**Article 49.** The law shall provide for the institution of emphyteusis concerning urban real property, the tenants having the option, in the event of extinction, of redemption of the emphyteusis, by acquisition of direct title in accordance with the provisions contained in the respective contracts.

Paragraph 1 - In the absence of a contractual clause, the criteria and bases currently in force in the special legislation on real estate of the Union shall be adopted.

Paragraph 2 - The rights of present registered occupants shall be ensured by application of another kind of contract.

Paragraph 3 - Emphyteusis shall continue to be applied to tide lands and those lands added to them, which are located within the security strip extending from the coast line.

Paragraph 4 - After redemption of the emphyteusis, the former holder of direct title shall, within ninety days, subject to liability, entrust all documents related to such title to the custody of the competent real estate registry.

**Article 50.** An agricultural law to be promulgated within one year shall provide, in accordance with this Constitution, for the objectives and instruments of agricultural policy, priorities, crop planning, marketing, internal supply, foreign market and institution of agrarian credit.

**Article 51.** All donations, sales and concessions of public land with an area of more than three thousand hectares. made in the period from January 1, 1962, to December 31, 1987, shall be reviewed by the National Congress, by a joint committee, during the three years following the promulgation of the Constitution

Paragraph I - Insofar as sales are concerned, the review shall be based exclusively on the criterion of lawfulness of the transaction.

Paragraph 2 - In the case of concessions and donations, the review shall comply with the criteria of lawfulness and of convenience of public interest

Paragraph 3 - In the cases set forth in the preceding paragraphs, if illegality is proven or if there is public interest, the lands shall revert to the ownership of the Union, of the states, of the Federal District or of the municipalities

**Article 52.** Until the conditions referred to in article 192 III, are established it shall be forbidden

- I. the installation, in the country, of new branches of financial institutions domiciled abroad;
- II. increase of percentual participation of individuals and legal entities resident or domiciled abroad in the capital of financial institutions with headquarters in Brazil.

Sole paragraph - The prohibition referred to in this article does not apply to the authorizations resulting from international agreements, from reciprocity or from interest of the Brazilian Government.

**Article 53.** Veterans who have actually participated in war operations during the Second World War, in accordance with Law number 5,315 of September 12, 1967, shall be ensured the following rights

- I. admission to public service without being required to undergo a public entrance examination, with tenure;
- II. special pension corresponding to that of Second Lieutenant of the Armed Forces, which may be applied for at any time and may not be accumulated with any other earnings received from the public treasury, except for social security benefits the right to opt being ensured;

- III. in case of death, proportional pension to the widowed companion or dependent, in an amount equal to that of the preceding item;
- IV. free medical, hospital and educational assistance extending to dependants;
- V. retirement with full pay after twenty-five years of actual service under any juridical system
- VI. priority in the acquisition of a home for those who do not own one or for their widows or companions

Sole paragraph - The concession of the special pension referred to in item II replaces, for all legal effects, any other pension already granted to the veteran.

**Article 54.** Rubber-tappers recruited in accordance with Decree-Law number 5,813 of September 14, 1943, and protected by Decree-Law number 9,882 of September 16, 1946, shall receive, when needy, a monthly pension for life in the amount of two minimum wages.

Paragraph 1 - The benefit extends to rubber-tappers who, at the request of the Brazilian Government, contributed to the war effort by working in rubber production in the Amazonian Region during the Second World War.

Paragraph 2 - The benefits established in this article may be transferred to dependants who are provenly needy.

Paragraph 3 - The concession of the benefit shall be done in accordance with the law to be proposed by the Executive Power within one hundred and fifty days of the promulgation of the Constitution.

**Article 55.** Until such time as the law of budgetary directives is approved, at least thirty percent of the social welfare budget, excluding unemployment insurance, shall be allocated to the health sector.

**Article 56.** Until such time as the law regulates article 195, I, the revenues resulting from at least five of the six tenths of one percent corresponding to the rate of the contribution referred to in Decree-Law number 1940 of May 25, 1982, as amended by Decree-Law number 2,049 of August 1, 1983, by Decree number 91,236 of May 8, 1985, and by Law number 7,611 of July 8, 1987, shall become part of the social welfare revenues, excepting, exclusively in the fiscal year of 1988, commitments assumed for ongoing programmes and projects.

**Article 57.** The debts of the states and municipalities related to social security contributions up to June 30, 1988, shall be settled, with adjustment for inflation, in one hundred and twenty monthly instalments, with the waiver of the interests and penalties applicable thereto, provided the debtors request installment payment and begin such payment within one hundred and eighty days of the promulgation of this Constitution.

Paragraph 1 - The amount to be paid in each of the first two years shall not be less than five percent of the total consolidated and updated debt, the balance to be divided into equal monthly instalments.

Paragraph 2 - Settlement may include payments by assignment of assets and rendering of services, as set forth in Law number 7,578 of December 23. 1986.

Paragraph 3 - As guarantee for the payment of the instalments, the states and municipalities shall each year consign in their respective budgets the appropriations required for the payment of their debts.

Paragraph 4 - If any of the conditions established for the concession of installment payment are not met, the debt shall be considered as due and payable in full and liable for default interest; in such case, the portion of the funds corresponding to the Participation Funds intended for the debtor states and municipalities shall be blocked and transferred to the social security for payment of their debts.

**Article 58.** Benefits paid on a continuous basis and maintained by social security on the date of the promulgation of the Constitution shall have their values reviewed so as to re-establish their purchasing power expressed in terms of the numbers of minimum wages they represented on the date on which they were granted, such updating criterion to be adopted until the plan of funding and benefits referred to in the following article is implemented.

Sole paragraph - The monthly benefit payments updated in accordance with this article shall be due and paid as from the seventh month after the promulgation of the Constitution.

**Article 59.** The bills of law for the organization of social welfare and for the plan of funding and benefits shall be submitted, not more than six months after the promulgation of the Constitution, to the National Congress, which shall have six months to examine them

Sole paragraph - Upon approval by the National Congress, the plans shall be implemented progressively in the following eighteen months.

**\*Article 60.** *In the first ten years after the promulgation of this Amendment, the states, the Federal District and the municipalities shall allocate no less than 60% of the funds referred to in the caption of article 212 of the Federal Constitution, to the maintenance and development of elementary education, aiming at the assurance of the universalization of the service and the payment of appropriate salaries to the teachers.*

*Paragraph 1 - The distribution of responsibilities and resources between the states and their municipalities, to be effected with part of the resources defined in this article, as set forth in article 211 of the Federal Constitution, is assured through the establishment, within each state and the Federal District, of a Fund for the Maintenance and Development of the Elementary Education and for the Increase of the Worth of the Teaching Profession, of a financial nature.*

*Paragraph 2 - The Fund referred to in the preceding paragraph shall be made up by, at least, fifteen percent of the resources referred to in articles 155, item II; 158, item IV; and 159, item I, subitems a and b; and item II, of the Federal Constitution, and shall be distributed among each state and its municipalities in proportion to the number of students in the respective elementary education networks*

*Paragraph 3 - The Union shall supplement the resources of the Funds referred to in paragraph 1, whenever in each state and in the Federal District its value per student does not reach the nationally set minimum.*

*Paragraph 4 - The Union, the states, the Federal District and the municipalities shall effect, during a period of five years, progressive adjustments of their contributions to the Fund, so as to guarantee a value per student corresponding to a minimum quality standard of education, defined at the national level.*

*Paragraph 5 - A share of not less than 60% of the resources of each Fund referred to in paragraph 1 shall be used for the payment of elementary education teachers actually teaching*

*Paragraph 6 - The Union shall apply never less than 30 percent of the resources referred to in the caption of article 212 of the Federal Constitution to the eradication of illiteracy and to the maintenance and development of the elementary education including the supplementation referred to in paragraph 3.*

*Paragraph 7 - The law shall provide for the organization of the Funds, the proportional distribution of its resources, its oversight and control, as well as for the way to calculate the national minimum value per student.*

**Article 61.** The educational entities referred to in article 213, as well as the educational and research foundations whose creation has been authorized by law, which meet the requirements of items I and II of such article and which have, in the last three years, received public funds, may continue to receive such funds, unless otherwise established by law.

**Article 62.** The law shall create the National Rural Apprenticeship Service (SENAR), based on the legislation for the National Industrial Apprenticeship Service (SENAI), and the National Commercial Apprenticeship Service (SENAC), without prejudice to the incumbencies of the government agencies engaged in the area.

**Article 63.** A Committee composed of nine members is hereby created, three of them from the Legislative Power, three from the Judicial Power and three from the Executive Power, to promote the commemorations of the centennial of the proclamation of the Republic and of the promulgation of the first republican Constitution of the country, and such committee may, at its discretion, be subdivided into as many subcommittees as may be necessary.

**Sole paragraph -** In the carrying out of its duties the Committee shall conduct studies, debates and assessments of the political, social, economic and cultural development of the country, and may join efforts with state and municipal governments and with public and private institutions desiring to take part in the events.

**Article 64.** The National Press and other printing departments of the Union, the states, the Federal District and the municipalities, of the direct or indirect administration, including foundations instituted and maintained by the Government, shall provide for a popular edition of the full text of the Constitution, which shall be made available free of charge, to schools and public registry offices, to unions, military barracks, churches and other

community organizations, in order that each Brazilian citizen may receive from the State a copy of the Brazilian Constitution

**Article 65.** The Legislative Power shall, within twelve months, regulate the article 220, paragraph 4.

**Article 66.** The public telecommunications utility concessions presently in force shall be maintained, as established by law.

**Article 67.** The Union shall conclude the demarcation of the Indian lands within five years of the promulgation of the Constitution.

**Article 68.** Final ownership shall be recognized for the remaining members of the ancient runaway slave communities who are occupying their lands and the state shall grant them the respective title deeds.

**Article 69.** The states shall be allowed to maintain legal consultancy offices independent from their Attorney-General Offices or Advocacy-General Offices, provided that they have separate agencies for the respective functions on the date of the promulgation of this Constitution.

**Article 70.** The present competence of the state courts shall be maintained until it is defined in the State Constitution, as established in article 125 paragraph 1, of the Constitution.

*\*Article 71. The Emergency Social Fund is hereby instituted for the fiscal years of 1994 and 1995, as well as for the period from January 1, 1996 through June 30, 1997, and from July 1, 1997 through December 31, 1999, aiming at the financial recuperation of the Federal Public Finances and the economic stabilization, the resources of which shall be applied primarily to the actions of the health and education systems, including the supplementation of resources set forth in paragraph 3 of Article 60, of the Temporary Constitutional Provisions Act, the welfare benefits and welfare assistance of a permanent nature, including the payment of welfare debts and budgetary expenditures associated to programs of great economic and social interest.*

*Paragraph 1 - The provision of the final part of item 11 of paragraph 9 of article 165 of the Constitution shall not apply to the Fund established by this article.*

*Paragraph 2 - From the beginning of the 1996 fiscal year on, the Fund established by this article shall be called Fiscal Stabilization Fund.*

*Paragraph 3 - The Executive Power shall publish, on a bimonthly basis, a budget execution statement, which statement shall list the sources and applications of the Fund established by this article.*

**\*Article 72.** The Emergency Social Fund is comprised of:

- I. the proceeds from the collection of the tax on income and earnings of any nature to be levied at source on payments of any nature effected by the Union including its autonomous government agencies and foundations.

- II. *the part of the proceeds from the collection of the tax on income and earnings of any nature, and of the tax on credit, foreign exchange and insurance transactions, or transactions relating to bonds and securities, resulting from the changes generated by Law 8,894 of June 21, 1994, and by Laws 8,849 and 8,848, both dated January 28, 1994 and further modifications;*
- III. *the part of the proceeds from the collection due to the increase of the rate of welfare contribution on the profit of taxpayers mentioned in paragraph I of article 22 of Law 8,212 of July 24, 1991, which, in the fiscal years of 1994 and 1995, as well as in the period from January 1, 1996 through June 30, 1997, shall be of 30 percent, subject to modification by ordinary law, the other stipulations of Law 7,869 of December 15, 1988 remaining unchanged;*
- IV. *twenty percent of the proceeds from the collection of all taxes and contributions to the Union, already instituted or to be instituted, except those provided by items I, II and III with due regard to the provisions of paragraphs 3 and 4;*
- V. *the part of the proceeds from the collection of the contribution mentioned in Supplementary Law 7, of September 7, 1970, owed by the juridical entities referred to in item III of this article, which will be calculated, in the fiscal years of 1994 and 1995, as well as in the periods from January 1, 1996 through June 30, 1997, and from July 1, 1997 through December 31, 1999, through the employment of a rate of seventy-five hundredths of one percent, subject to modification by ordinary law, on the gross operating income, as defined in the legislation of income tax and earnings of any nature; and*
- VI. *other incomes defined in specific legislation.*

Paragraph 1 - The rates and calculation base defined in items III and V shall be applied as from the first day of the month following the ninetieth day after the promulgation of this amendment.

*Paragraph 2 - The parts referred to in items I, II, III and V shall be previously deducted from the calculation base of any legal or constitutional designation or participation, and the provisions of articles 159, 212 and 239 of the Constitution shall not apply to them.*

*Paragraph 3 - The part referred to in item IV shall be previously deducted from the calculation base of any constitutional or legal designation or participation stipulated by articles 153, paragraph 5, 157, 11, 212 and 239 of the Constitution.*

*Paragraph 4 - The provision of the former paragraph shall not apply to the resources provided by articles 158, II and 159 of the Constitution.*

*Paragraph 5 - The part of the resources originating from the tax on income and earnings of any nature, designated for the Emergency Social Fund, as provided by item 11 of this article, shall not exceed five and six-tenths of one percent of the total proceeds from its collection.*

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\*CA 10/96 and CA 17/97

**Article 73.** In the regulation of the Emergency Social Fund, the instrument provided by item V of article 59 of the Constitution may not be applied.

**\*Article 74.** *The Union may establish provisional contribution on the movement Or transmission of monies and of credits and rights of financial nature.*

*Paragraph 1 - The rate of the contribution mentioned in this article shall not exceed twenty-five hundredths of one percent, and the Executive Power may reduce it or reestablish it, in whole or in part, in the conditions and limits provided for by law.*

*Paragraph 2 - The provisions of Articles 153, paragraph 5, and 154, 1, of the Constitution shall not apply to the contribution mentioned in this article.*

*Paragraph 3 - The whole of the proceeds from the collection of the contribution mentioned in this Article shall be allocated to the National Health Foundation for the financing of health actions and services.*

*Paragraph 4 - The liability for the contribution mentioned in this article shall be governed by the provisions of Article 195, paragraph 6, of the Constitution, and it shall not be collected for longer than two years.*

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Brasília, October 5, 1988. - Ulysses Guimarães, President - Mauro Benevides, First Vice-President - Jorge Arbage, Second Vice-President - Marcelo Cordeiro, First Secretary - Mário Maia, Second Secretary - Arnaldo Faria de Sá, Third Secretary - Benedita da Silva, First Substitute Secretary - Luiz Soyer, Second Substitute Secretary - Sotero Cunha, Third Substitute Secretary - Bernardo Cabral, Reporter-General - Adolfo Oliveira, Adjunct Reporter - Antonio Carlos Konder Reis, Adjunct Reporter - José Fogaça, Adjunct Reporter - Abigail Feitosa - Acival Gomes - Aduino Pereira - Ademir Andrade - Adhemar de Barros Filho - Adroaldo Streck - Adylson Affiotto - Aécio de Borba - Aécio Neves - Affonso Camargo - Aff Domingos - Afonso Arinos - Afonso Sancho - Agassiz Almeida - Agripino de Oliveira Lima - Ailton Cordeiro - Ailton Sandoval - Alarico Abib - Albano Franco - Albérico Cordeiro - Albérico Filho - Alcení Guerra - Alcides Saldanha - Aldo Arantes - Alécio Dias - Alexandre Costa - Alexandre Puzyna - Alfredo Campos - Almir Gabriel - Aloisio Vasconcelos - Aloysio Chaves - Aloysio Teixeira - Aluizio Bezerra - Aluizio Campos - Álvaro Antônio - Álvaro Pacheco - Álvaro Valle - Atysson Paulinelli - Amaral Netto - Amaury Müller - Amílcar Moreira - Ângelo Magalhães - Anna Maria Rattes - Annibal Barcellos - Antero de Barros - Antônio Câmara - Antônio Carlos Franco - Antonio Carlos Mendes Thame - Antônio de Jesus - Antonio Ferreira - Antonio Gaspar - Antonio Mariz - Antonio Perosa - Antônio Salim Curiati - Antonio Ueno - Arnaldo Martins - Arnaldo Moraes - Arnaldo Prieto - Arnold Fioravante - Arolde de Oliveira - Artenir Werner - Artur da Távola - Asdrubal Bentes - Assis Canuto - Atila Lira - Augusto Carvalho - Aúreo Mello - Basílio Villani - Benedicto Monteiro - Benito Gama - Beth Azize - Bezerra de Melo - Bocayuva Cunha - Bonifácio de Andrada - Bosco França - Brandão Monteiro - Caio Pompeu - Carlos Alberto - Carlos Alberto Caó - Carlos Benevides - Carlos Cardinal - Carlos Chiarelli - Carlos Cotta - Carlos De'Carli - Carlos Mosconi - Carlos Sant'Anna - Carlos Vinagre - Carlos Virgílio - Carrel Benevides - Cássio Cunha Lima - Célio de Castro - Celso Dourado - César Cals Neto - César Maia - Chagas Duarte - Chagas Neto - Chagas Rodrigues - Chico Humberto - Christvam Chiaradia - Cid Carvalho - Cid Sabóia de Carvalho - Cláudio Avila - Cleonancio Fonseca - Costa Ferreira - Cristina Tavares - Cunha Bueno - Dálton Canabrava - Darcy Deitos - Darcy Pozza - Daso Coimbra - Davi Alves Silva - Del Bosco

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 - Flavio Rocha - Florestan Fernandes - Floriceno Paixdo - França Teixeira - Francisco  
 Amaral - Francisco Benjamim - Francisco Carneiro - Francisco Coelho - Francisco  
 Diógenes - Francisco Dornelles - Francisco Kuster - Francisco Pinto - Francisco  
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 Gilson Alachado - Gonzaga Patriota - Guilherme Palmeira - Gumercindo Milhomem -  
 Gustavo de Faria - Harlan Gadelha - Haroldo Lima - Haroldo Sabóia - Hélio Costa - Hélio  
 Duque - Hélio Manhães -Hélio Rosas - Henrique Córdova - Henrique Eduardo Alves -  
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 - Joaquim Francisco - Joaquim Hayckel - Joaquim Sucena - Jofran Frejat - Jonas Pinheiro  
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 Queiroz - José Richa - José Santana de Vasconcellos - José Serra - José Tavares José  
 Teixeira - José Thomaz Nono - José Tinoco - José Ulisses de Oliveira - José Vana - José  
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 Souza - Leopoldo Peres - Leur Lomanto - Levy Dias - Lézio Sathler - Lidice da Mata -  
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 Mário Covas - Mário de Oliveira - Mário Lima - Marluce Pinto -- Matheus Iensen - Mattos

*Ledo - Mauricio Campos Mauricio Correa - Mauricio Fruet - Mauricio Nasser - Maurício Pádua Maurílio Ferreira Lima - Mauro Borges - Mauro Campos - Mauro Miranda - Mauro Sampaio - Max Rosenmann - Meira Filho - Melo Freire - Mello Reis - Mendes Botelho - Mendes Canale - Mendes Ribeiro - Messias Góis Messias Soares - Michel Temer - Milton Barbosa - Milton Lima - Milton Reis - Miraldo Gomes - Miro Teixeira - Moema São Thiago - Moysés Pimentel - Mozarildo Cavalcanti - Mussa Demes - Myrian Portella - Nabor Júnior - Naphtali A Ives de Souza - Narciso Mendes - Nelson Aguiar - Nelson Caw eirs - Nelson Jobim - Nelson Sabr - Nelson Seixas - Nelson Wedekin - Nelton Friedrich - Nestor Duarte - NeyMaranhdo - Mlso Sguarezi - Mlson Gibson - Nion Albernaz - Noel de Carvalho - Nyder Barbosa - Oct vio Eljsio - Odacir Soares - Olavo Pires - Olivio Dutra - Onofre Cowea - Orlando Bezewa - Orlando Pacheco - Oscar Correa - Osmar Leitdo - Osmir Lima - Osmundo Rebouças - Osvaldo Bender - Osvaldo Coelho - Osvaldo Macedo - Osvaldo Sobrinho - Oswaldo Almeida - Oswaldo Trevisan - Ottomar Pinto - Paes de Andrade - Paes Landim - Paulo Delgado - Paulo Macarni - Paulo Marques - Paulo Mincarone - Paulo Paim - Paulo Pimentel - Paulo Ramos - Paulo Roberto - Paulo Roberto Cunha - Paulo Silva - Paulo Zarzur - Pedro Canedo - Pedro Ceolin - Percival Muniz - Pimenta da Veiga - Plínio Arruda Sampaio - Plínio Martins - Pompeu de Sousa - Rachid Saldanha Derzi - Raimundo Bezerra - Raimundo Lira - Raimundo Rezende - Raquel Candido - Raquel Capiberibe - Raul Belém - Raul Ferraz - Renan Calheiras - Renato Bernardi - Renato Johnsson - Renato Vianna - Ricardo Fiaza - Ricardo Izar - Rita Camata - Rita Furtado - Roberto Augusto - Roberto Balestra - Roberto Brant - Roberto Campos - Roberto D'Avila - Roberto Freire - Roberto Jefferson - Roberto Rollemberg - Roberto Torres - Roberto Vital - Robson Marinho - Rodrigues Palma - Ronaldo Aragdo -- Ronaldo Carvalho - Ronaldo Cezar Coelho - Ronan Tito - Ronaro Correa - Rosa Prata - Rose de Freitas - Rospide Netto - Rubem Branquinho - Rubem Medina - Ruben Figueiró - Ruberval Pilotto - Ruy Bacelar - Ruy Nedel - Sadie Hauache - Salatiel Carvalho - Samir Achoa - Sandra Cavalcanti - Santinho Furtado - Sarney Filho - Saulo Queiroz- Sérgio Brito - Sérgio Spada - Sérgio Werneck - Severo Gomes - Sigmaringa Seixas - Sílvio Abreu - Simdo Sessim - Siqueira Campos - Sólon Borges dos Reis - Stélio Dias - Tadeu França - Telmo Kirst - Teotonio Vilela Filho - Theodoro Mendes - Tito Costa - Ubiratan Aguiar - Ubiratan Spinelli - Uldurico Pinto - Valrnir Campelo - Valter Pereira - Vasco Alves - Vicente Bogo - Victor Faccioni - Victor Fontana - Victor Trovdo - Vieira da Silva - Vilson Souza - Vingt Rosado - Vinicius Cansanço - Virgilio sio de Senna - Virgilio Galassi - Virgilio Guimardes - Vitor Buaiz - Vivaldo Barbosa - Vladimir Palmeira - Wagner Lago - Waldec Ornilas - Waldyr Pugliesi - Walmor de Luca - Wilma Maia - Wilson Campos - Wilson Martins - Ziza Valadares.*

*Participants: Álvaro Dias - Antonio Britto - Bete Mendes - Borges da Silveira - Cardoso Alves - Edivaldo Holanda - Expedito Júnior - Fadah Gattass - Francisco Dias - Geovah Amarante - Hélio Gueiros - Horácio Ferraz - Hugo Napoledo - Iturival Nascimento - Ivan Bonato - Jorge Medauar- José Mendonça de Moraes - Leopoldo Bessone - Marcelo Miranda - Mauro Fecury - Neuto de Conto - Mvaldo Machado - Oswaldo Lima Filho - Paulo Almada - Prisco Viana - Ralph Biasi - Rosário Congro Neto - Sérgio Naya - Tidei de Lima.*

*In Memoriam: Alair Ferreira - Antônio Farias - Fábio Lucena - Norberto Schwantes- Virvílio Távora. Official Journal, October 5, 1988.*

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## CONSTITUTIONAL AMENDMENT No. 1, 1992

*Provides for the remuneration of State Deputies and City Councilmen.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Paragraph 2 of article 27 of the Constitution shall henceforth be in force with the following wording:

"Article 27 ....."

Paragraph 2 - The remuneration of the State Deputies shall be established in each legislative term, for the subsequent one, by the Legislative Assembly, as provided by articles 150, II, 153, III, and 153, paragraph 2, I, in the proportion of seventy-five percent, at most, of the remuneration established, in legal tender, for the Federal Deputies. ...."

**Article 2.** The following items VI and VII are added to article 29 of the Constitution. the subsequent ones being renumbered:

"Article 29 ....."

VI - the remuneration of the City Councilmen shall correspond, at the most, to seventy-five percent of the remuneration established, in legal tender, for the State Deputies, except for the provisions of article 37, XI:

VII - the total expenditure with the remuneration of the City Councilmen may not exceed the amount of five percent of the revenue of the Municipality;  
....."

**Article 3.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, March 31, 1992

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: Deputy *Ibsen Pinheiro*, President - Deputy *Waldir Pires*, Second Vice-President - Deputy *Cunha Bueno*, Third Secretary - Deputy *Max Rosenmann*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: Senator *Mauro Benevides*, President - Senator, *Alexandre Costa*, First Vice-President - Senator *Carlos De 'Carli*, Second Vice-President - Senator *Dirceu Carneiro*, First Secretary - Senator *Márcio Lacerda*, Second Secretary - Senator *Iram Saraiva*, Fourth Secretary.

*Official Journal*, April 6, 1992.

## ORIGINAL WORDING

**Article 27:** "Paragraph 2 - The remuneration of the State Deputies shall be established in each legislative term, for the subsequent one, by the Legislative Assembly, as provided in articles 150, III, and 153, paragraph 2, I."

**Article 29:** VI to VII: original numbering of items VIII to XIV.

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**CONSTITUTIONAL AMENDMENT No. 2, 1992**

*Provides for the plebiscite set forth in article 2 of the Temporary Constitutional Provisions Act.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

Sole article. The plebiscite mentioned in article 2 of the Temporary Constitutional Provisions Act shall be held on April 21, 1993.

Paragraph 1 - The form and system of government defined by the plebiscite shall become effective on January 1, 1995.

Paragraph 2 - The law may provide for the holding of the plebiscite, including provisions for the free divulgation, free of charge, of the forms and systems of government, through public utility mass communication vehicles, equal allotment of time and parity of scheduling being ensured.

Paragraph 3 - The rule set forth in the preceding paragraph does not preclude the competence of the Superior Electoral Court to issue instructions necessary to the holding of the plebiscite.

Brasília, August 25, 1992.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: Deputy *Ibsen Pinheiro*, President - President-Deputy *Genésio Bernardino*, First Vice-President - Deputy *Waldir Pires*, Second Vice-President - Deputy *Inocência Oliveira*, First Secretary - Deputy *Etevaldo Nogueira*, Second Secretary - Deputy Cunha Bueno, Third Secretary - Deputy *Max Rosenmann*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: Senator *Mauro Benevides*, President - Senator *Alexandre Costa*, First Vice-President - Senator *Carlos De' Carli*, Second Vice-President - Senator *Dirceu Carneiro*, First Secretary - Senator *Márcio Lacerda*, Second Secretary - Senator *Rachid Saldanha Derzi*, Third Secretary - Senator *Iram Saraiva*, Fourth Secretary.

*Official Journal*, September 1, 1992.

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**CONSTITUTIONAL AMENDMENT No. 3, 1993**

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60. of the Federal Constitution, promulgate the following Amendment to the constitutional text:

**Article I.** The provisions of the Federal Constitution enumerated below shall henceforth be in force with the following alterations:

**"Article 40.....**

Paragraph 6 - The retirement and pension benefits of the federal civil servants shall be financed by resources originating from the Union and from the contributions of the civil servants, under the terms of the law."

**"Article 42.....**

Paragraph 10 - The provisions in article 40, paragraphs 4, 5, and 6 apply to the servicemen referred to in this article and to their pensioners.

**"Article 102..... I -**

..... a) direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal law or normative act;

Paragraph 1 - A claim of non-compliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law.

Paragraph 2 - Final decisions on merits, pronounced by the Supreme Federal Court, in declaratory actions of constitutionality of a federal law or normative act, shall have force against all, as well as a binding effect, as regards the other bodies of the Judicial Power, as well as the Executive Power."

**"Article 103.....**

Paragraph 4 - A declaratory action of constitutionality may be filed by the President of the Republic, the Directing Board of the Federal Senate, the Directing Board of the Chamber of Deputies or by the Attorney-General of the Republic."

**"Article 150.....**

Paragraph 6 Any subsidy or exemption; reduction of assessment basis, concession of presumed credit, amnesty or remission, related to taxes, fees or contributions, may only be granted by means of a specific federal, state or municipal law, which provides exclusively for the above-enumerated matters or the corresponding tax, fee or contribution without prejudice to the provisions of article 155, paragraph 2, item XII, g.

Paragraph 7 - The law may impose upon the taxpayer the burden of the payment of a tax or contribution, whose taxable event will occur later, the immediate and preferential restitution of the amount paid being ensured, in case the presumed taxable event does not occur."

**"Article 155.** The states and the Federal District shall have the power to institute taxes on:

I - transfer by death and donation of any property or rights;

II - transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad;

III - ownership of automotive vehicles.

Paragraph 1 - The tax established in item I:

Paragraph 2 - The tax established in item II shall observe the following:

Paragraph 3 With the exception of the taxes mentioned in item II of the caption of the present article, and article 153, I and II, no other tribute may be levied on transactions concerning electric energy, telecommunications services, petroleum by-products fuels and minerals of the country."

**"Article 156.....**

III services of any nature not included in article 155; II; as defined in a supplementary law.

Paragraph 3 - As regards the tax established in item III; a supplementary law shall:

I - establish its maximum rates;

II - exclude exportations of services to other countries from levy of the said tax. "

**"Article 160.....** Sole paragraph - The prohibition mentioned in the present article does not prevent the Union and the states from remitting the funds on condition of payment of their credits, including those of the autonomous government agencies."

**"Article 167.....**

IV - to bind tax revenues to an agency, fund or expense, excepting the sharing of the proceeds from the collection of the taxes referred to in articles 158 and 159, the allocation of funds for the maintenance and development of education, as determined in article 212, and the granting of guarantees on credit transactions by advance of revenues, as established in article 165, paragraph 8, as well as in paragraph 4 of the present article;

Paragraph 4 - It is permitted to bind proper revenues generated by the taxes referred to in articles 155 and 156, and the funds mentioned in articles 157, 158 and 159, I, a and b, to the granting of a guarantee or a counterguarantee to the Union, and to the payment of debits owed to the same."

**\*Article 2.** The Union may institute, under the terms of a supplementary law, effective until December 31, 1994, a tax on the transaction or transfer of securities and of credits and rights of a financial nature.

\* Paragraph 4 revoked by article 2 of the Revision Constitutional Amendments 1/94.

Paragraph 1. The rate of the tax mentioned in the present article shall not exceed twenty-five hundredths percent, and the Executive Power may reduce it or re-establish it, in whole or in part, under the conditions and limits set forth in law.

Paragraph 2 - Article 150, III, b, and VI, and the provisions of paragraph 5 of article 153 of this Constitution do not apply to the tax mentioned in the present article.

Paragraph 3 - The proceeds from the collection of the tax mentioned in the present article are not subject to any mode of sharing with another unit of the federation.

Paragraph 4 - Of the proceeds from the collection of the tax mentioned in the present article, twenty percent shall be assigned to the funding of low- income housing programs.

**Article 3.** The elimination of the tax additional to income tax, within the competence of the states, deriving from the present Constitutional Amendment, shall only become effective as of January 1, 1996, the corresponding rate being reduced to at least two and a half percent in the fiscal year of 1995.

**Article 4.** The elimination of the tax on the retail sales of liquid and gaseous fuels, within the competence of the municipalities, deriving from the present Constitutional Amendment, shall only become effective as of January 1, 1996, the corresponding rate being reduced to at least one and a half percent in the fiscal year of 1995.

**Article 5.** Until December 31, 1999, the states, the Federal District and the municipalities may only issue public debt bonds up to the amount necessary to refinance the principal, adequately updated, of its liabilities. represented by that type of bonds, with the exception of the provisions of article 33, sole paragraph, of the Temporary Constitutional Provisions Act.

**Article 6.** Item IV and paragraph 4 of article 156 of the Federal Constitution are hereby revoked.

Brasília, March 17, 1993.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: Deputy *Inocêncio Oliveira*, President - President-Deputy *Adylson Motta*, First Vice-President - Deputy *Fernando Lyra*, Second Vice-President - Deputy *Wilson Campos* - First Secretary - Deputy *Cardoso Alves*, Second Secretary - Deputy *B. Sá*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: Senator *Humberto Lucena*, President - Senator *Chagas Rodrigues*, First Vice-President - Senator *Levy Dias*, Second Vice-President - Senator *Júlio Campos*, First Secretary - Senator *Nabor Júnior*, Second Secretary - Senator *Júnia Marise*, Third Secretary Senator *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, March 18, 1993.

## ORIGINAL WORDING

**Article 42:**

"Paragraph 10 - The provisions in article 40, paragraphs 4 and 5, apply to the servicemen referred to in this article and to their pensioners."

**Article 102, I:**

"a) direct actions of unconstitutionality of a federal or state law or normative act."

"Sole paragraph - A claim of noncompliance with a fundamental precept deriving from this Constitution shall be examined by the Supreme Federal Court, under the terms of the law."

**Article 150:**

"Paragraph 6 - Any amnesty or remission concerning taxes or social security may only be granted by means of a specific state or municipal law."

**Article 155:**

**"Article 155.** The states and the Federal District shall have power to institute:

I - taxes on:

a) transfer by death and donation of any property or rights;

b) transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad;

c) ownership of automotive vehicles;

II - additional tax of up to five per cent of the tax paid to the Union by individuals or corporate bodies, domiciled in the respective territories, in the quality of the tax instituted in article 153, III, on capital profits, gains and income.

Paragraph 1 - The tax established in item I, a:"

"Paragraph 2 - The tax established in item I, b, shall observe the following:"

"Paragraph 3 - With the exception of the taxes mentioned in item I, b, of the caption of the present article, and article 153, I and II, and 156, III, no other tribute shall be levied on transactions concerning electric energy, liquid and gaseous fuels, lubricants and minerals of the country."

**Article 156:**

"III - retail sales of liquid and gaseous fuels, except diesel oil. IV - services of any nature not included in article I, b, as defined in a supplementary law."

"Paragraph 3 - The tax set forth in item III does not exclude the levy of the state tax set forth in article 155, I, b, on the same transaction.

Paragraph 4 - A supplementary law shall:

I - establish the maximum rates for the taxes set forth in items III and IV.

II - exclude exportations of services to other countries from levy of the tax set forth in item IV."

**Article 160:**

"Sole paragraph - This prohibition shall not prevent the Union from remitting the funds on condition of payment of its credits.

**Article 167:**

"IV - to bind tax revenues to an agency, fund or expense, excepting the sharing of the proceeds from the collection of the taxes referred to in articles 158 and 159, the allocation of funds for the maintenance and development of education, as determined in article 212, and the granting of guarantees on credit transactions by advance of revenues, as established in article 165, paragraph 8;"

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**CONSTITUTIONAL AMENDMENT No. 4, 1993**

*Gives new wording to article 16 of the Federal Constitution.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Sole Article.** Article 16 of the Federal Constitution shall henceforth be in force with the following wording:

**"Article 16.** The law that alters the electoral procedure shall come into force on the date of its publication, and shall not apply to the elections that take place within one year of it being in force."

Brasília, September 14, 1993.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: Deputy *Inocência Oliveira* President - Deputy *Wilson Campos*, First Secretary - Deputy *Cardoso Alves*, Second Secretary - Deputy *B. Sá*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: Senator *Humberto Lucena*, President - Senator *Chagas Rodrigues*, First Vice-President - Senator *Levy Dias*, Second Vice-President - Senator *Júlio Campos*, First Secretary - Senator *Nabor Júnior*, Second Secretary.

*Official Journal*, September 15, 1993.

#### ORIGINAL WORDING

**"Article 16.** The law altering the electoral procedure shall into force only one year after it is promulgated."

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#### CONSTITUTIONAL AMENDMENT No. 5, 1995

*Alters paragraph 2 of article 25 of the Federal Constitution*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Sole Article.** Paragraph 2 of article 25 of the Federal Constitution ‡ henceforth be in force with the following wording:

**"Article 25**

Paragraph 2 - The states shall have the power to operate, directly or by means of concession, the local services of piped gas provided for by law, it being forbidden to issue any provisional measure for its regulation."

Brasília, August 15, 1995.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal*, August 16, 1995.

## ORIGINAL WORDING

### Article 25:

#### "Article 25.

Paragraph 2 - The states shall have the power to operate, directly or by means of a concession to a state-owned company, with exclusive rights of distribution, the local services of piped gas."

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### CONSTITUTIONAL AMENDMENT No. 6, 1995

*Alters item IX of article 170, article 171, and paragraph I of article 176 of the Federal Constitution.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Item IX of article 170 and paragraph I of article 176 of the Federal Constitution shall henceforth be in force with the following wording:

#### "Article 170.

IX - preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil."

**"Article 176.....** Paragraph 1 - The prospecting and mining of mineral resources and the utilization of the potentials mentioned in the caption of this article may only take place with authorization or concession by the Union, in the national interest, by Brazilians or by a company organized under Brazilian laws and having its head- office and management in Brazil, in the manner set forth by law, which law shall establish specific conditions when such activities are to be conducted in the boundary zone or on Indian lands."

**Article 2.** The following article 246 shall be included in Title IX - " Constitutional Provisions":

"Article 246. The adoption of any provisional measure for the regulation of any article of the Constitution the wording of which has been altered by means of an amendment enacted as of 1995 is forbidden "

**Article 3.** Article 171 of the Federal Constitution is hereby revoked.

Brasília. August 15, 1995.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir*

Soares, First Secretary - *Renan Calheiros*, Second Secretary - Levy Dias, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal*, August 16, 1995.

## ORIGINAL WORDING

### Article 170:

"IX - preferential treatment for small Brazilian enterprises of national capital."

### Article 171.

"**Article 171.** It is considered:

I - a Brazilian company, one that is organized under Brazilian laws and has its head-office and management in Brazil; II - a Brazilian company of domestic capital, one whose effective control is directly or indirectly held permanently either by individuals resident and domiciled in Brazil or by domestic public entities, the effective control of the company being understood as the ownership of the majority of its voting capital and de facto and legal exercise of the decision-making power to manage its activities.

Paragraph 1 - The law may, with regard to a Brazilian company of domestic capital: I - grant special temporary protection and benefits for the development of activities deemed strategic for the national defense or vital to the development of the country;

II - establish, whenever it deems a sector vital to national technological development, the following conditions and requisites, among others:

- a) the requirement that the control mentioned in item II of the caption be extended to the company's technological activities this being understood as de facto and legal exercise of the decision-making power to develop or absorb technology;
- b) percentages of capital participation by individuals domiciled and resident in Brazil or by domestic public entities.

Paragraph 2 - In the procurement of goods and services, the Government shall give preferential treatment to Brazilian companies of domestic capital, as established by law."

### Article 176:

"**Article 176.** Mineral deposits, under exploitation or not, and other mineral resources and the hydraulic energy potentials form, for the purpose of exploitation or utilization, a property separate from that of the soil and belong to the Union, the concessionaire being guaranteed the ownership of the mined product.

Paragraph 1 - The prospecting and mining of mineral resources and the utilization of the potentials mentioned in the caption of this article may only take place with authorization or concession by the Union, in the national interest, by Brazilians or by Brazilian companies of domestic capital, in the manner set forth by law, which law shall establish specific conditions when such activities are to be conducted in the boundary zone or on Indian lands.

Paragraph 2 - The owner of the soil is ensured of participation in the results of the mining operation, in the manner and amount as the law shall establish.

Paragraph 3 - Authorization for prospecting shall always be for a set period of time and the authorization and concession set forth in this article may not be assigned or transferred, either in full or in part, without the prior consent of the conceding authority.

Paragraph 4 - Exploitation of a renewable energy potential of small capacity shall not require an authorization or concession."

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### **CONSTITUTIONAL AMENDMENT No. 7, 1995**

*Alters article 178 of the Federal Constitution and provides for the adoption of Provisional Measures.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Article 178 of the Federal Constitution shall henceforth be in force with the following wording:

**"Article 178.** The law shall provide for the regulation of air water and ground transportation, and it shall, in respect to the regulation of international transportation, comply with the agreements entered into by the Union, with due regard to the principle of reciprocity.

Sole Paragraph. In regulating water transportation, the law shall set forth the conditions in which the transportation of goods in coastal and internal navigation will be permitted to foreign vessels."

**Article 2.** The following article 246 shall be included in Title IX - "General Constitutional Provisions"

"Article 246. The adoption of any provisional measure for the regulation of any article of the Constitution the wording of which has been altered by means of an amendment enacted as of 195 is forbidden "

Brasília, August 15, 1995.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

Official Journal, August 16, 1995.

## ORIGINAL WORDING

### Article 178:

"**Article 178.** The law shall provide for:

I - the regulation of air, ocean and ground transportation;

II - the predominance of domestic shipowners and ship of Brazilian flag and registration, and of those of the exporting or importing country;

III - bulk transportation;

IV - the use of fishing and other vessels.

Paragraph 1- The regulation of international transportation shall comply with the agreements entered into by the Union with due regard for the principle of reciprocity.

Paragraph 2 - The captains, at least two-thirds of the crew, as well as those who own and exploit domestic vessels shall be Brazilian.

Paragraph 3 - Coastal and internal navigation are restricted to Brazilian vessels. except in the event of public necessity, as established by law."

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## CONSTITUTIONAL AMENDMENT No. 8, 1995

*Alters item X3 and letter "a " of item XII of article 21 of the Federal Constitution.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Item XI and letter a of item XII of article 21 of the Federal Constitution shall henceforth be in force with the following wording:

"**Article 21.** The Union shall have the power to:

XI - operate, directly or through authorization, concession or permission, the telecommunications services, as set forth by law, which law shall provide for the organization of the services, the establishment of a regulatory agency and other institutional issues;

XII - operate, directly or through authorization, concession or permission:

a) the services of sound broadcasting and of sound and image broadcasting;

**Article 2.** The adoption of any Provisional Measure for the regulation of the matter set forth in item XI of article 21 with the wording given by this constitutional amendment is forbidden.

Brasília, August 15, 1995.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson*

*Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal*, August 16, 1995.

## ORIGINAL WORDING

### Article 21:

"XI - operate, directly or through concession to companies with the majority of voting shares under state control, the telephone, telegraph and data transmission services as well as other public telecommunications services, provided that information services may be rendered by private legal entities through the public telecommunications network operated by the Union;  
XII - operate, directly or through authorization, concession or permission:  
a) the services of sound broadcasting and of sound and image broadcasting as well as other telecommunications services;"

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### CONSTITUTIONAL AMENDMENT No. 9, 1995

*Gives new wording to article 177 of the Federal Constitution, altering and inserting paragraphs.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Paragraph 1 of article 177 of the Federal Constitution shall henceforth be in force with the following wording:

**"Article 177.....**

Paragraph 1 - The Union may contract with state-owned or with private enterprises for the execution of the activities provided for in items I through IV of this article, with due regard for the conditions set forth by law."

**Article 2.** A paragraph shall be included, to be numbered as paragraph 2, with the following wording, the present paragraph 2 becoming paragraph 3, in article 177 of the Federal Constitution:

**"Article 177.....**

Paragraph 2 - The law referred to in paragraph 1 shall provide for:  
I - a guarantee of supply of petroleum products in the whole national territory;  
II- the conditions of contracting;  
III- the structure and duties of the regulatory agency of the monopoly of the Union."

**Article 3.** The issuing of any provisional measure for the regulation of the matter set forth in items I through IV and in paragraphs 1 and 2 of article 177 of the Federal Constitution is forbidden.

Brasília, November 9, 1995.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal*. November 10, 1995

### ORIGINAL WORDING

#### Article 177:

"Paragraph 1- The monopoly set forth in this article includes the risks and results deriving from the activities mentioned therein, and the Union is forbidden to assign or grant concessions of any kind of participation, either in kind or in legal tender, in the exploitation of petroleum or natural gas deposits, excepting the provisions of article 20, paragraph I."

Paragraph 2 - The law shall provide with respect to the transportation and use of radioactive materials within the national territory."

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### CONSTITUTIONAL AMENDMENT No. 10, 1996

*Alters articles 71 and 72 of the Temporary Constitutional Provisions Act, introduced by the Revision Constitutional Amendment No. 1 of 1994.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Article 71 of the Temporary Constitutional Provisions Act shall henceforth be in force with the following wording:

**"Article 71.** The Emergency Social Fund is hereby instituted for the fiscal years of 1994 and 1995, as well as for the period from January 1, 1996 through June 30, 1997, aiming at the financial recuperation of the Federal Public Finances and the economic stabilization, the resources of which shall be applied primarily to the actions of the health and education systems, the welfare benefits and welfare assistance of permanent nature, including the payment of welfare debts and budgetary expenditures associated to programs of great economic and social interest.

Paragraph 1 - The provision of the final part of item II of paragraph 9 of article 165 of the Constitution shall not apply to the Fund established by this article.

Paragraph 2 - From the beginning of the 1996 fiscal year on, the Fund established by this article shall be called Fiscal Stabilization Fund.

Paragraph 3 - The Executive Power shall publish, on a bimonthly basis, a budget execution statement, which statement shall list the sources and applications of the Fund established by this article."

**Article 2.** Article 72 of the Temporary Constitutional Provisions Act shall henceforth be in force with the following wording:

**"Article 72.** The Emergency Social Fund is comprised of: 1-

.....,

II - the part of the proceeds from the collection of the tax on income and earnings of any nature, and of the tax on credit, foreign exchange and insurance transactions, or transactions relating to bonds and securities, resulting from the changes generated by Law 8,894 of June 21, 1994, and by Laws 8,849 and 8,848, both dated January 28, 1994 and further modifications;

III - the part of the proceeds from the collection due to the increase of the rate of welfare contribution on the profit of taxpayers mentioned in paragraph 1 of article 22 of Law 8,212 of July 24, 1991, which, in the fiscal years of 1994 and 1995, as well as in the period from January 1, 1996 through June 30, 1997, shall be of 30 percent, subject to modification by ordinary law, the other stipulations of Law 7,689 of December 15, 1988 remaining unchanged;

IV - twenty percent of the proceeds from the collection of all taxes and contributions to the Union, already instituted or to be instituted, except those provided by items I, II and III, with due regard to the provisions of paragraphs 3 and 4;

V - the part of the proceeds from the collection of the contribution mentioned in Supplementary Law 7, of September 7, 1970, owed by the juridical entities referred to in item III of this article, which will be calculated, in the fiscal years of 1994 and 1995, as well as in the period from January 1, 1996 through June 30, 1997, through the employment of a rate of seventy five hundredths of one percent, subject to modification by ordinary law, on the gross operating income, as defined in the legislation of income tax and earnings of any nature; and

VI - .....

Paragraph 1 - .....

.....

Paragraph 2 - The parts referred to in items I, II, III and V shall be previously deducted from the calculation base of any legal or constitutional designation or participation, and the provisions of articles 159, 212 and 239 of the Constitution shall not apply to them.

Paragraph 3 - The part referred to in item IV shall be previously deducted from the calculation base of any constitutions or legal designation or participation stipulated by articles 153, paragraph 5, 157, II, 212 and 239 of the Constitution.

Paragraph 4 - The provision of the former paragraph shall not apply to the resources provided by articles 158, II, and 159 of the Constitution.

Paragraph 5 - The part of the resources originating from the tax on income and earnings of any nature, designated for the Emergency Social Fund, as provided by item II of the article, shall not exceed five and six-tenths of one percent of the total proceeds from its collection."

**Article 3.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, March 4, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal.* March 7, 1996.

## ORIGINAL WORDING

### Article 71:

"**Article 71.** The Emergency Social Fund is hereby instituted for the fiscal years of 1994 and 1995, aiming at the financial recuperation of the Federal Public Finances and the economic stabilization, the resources of which shall be applied to the actions of the health and education systems, the welfare benefits and welfare assistance of permanent nature, including the payment of welfare debts, as well as other programs of great social and economic interest.

Sole paragraph. The provision of the final part of item II of paragraph 9 of article 165 of the Constitution shall not apply, in the 1994 fiscal year, to the the Fund established by this article."

### Article 72

"I - .....

II - the part of the proceeds from the collection of the tax on urban buildings and urban land property, of the tax on income and earnings of any nature, and of the tax on credit, foreign exchange and insurance transactions, or transactions relating to bonds and securities, resulting from the changes generated by Provisional Measure 419 and by Laws 8,847, 8,849 and 8,848, all dated January 28, 1994, the period in force of the latter being extended to December 31, 1995;

III - the part of the proceeds from the collection due to the increase of the rate of welfare contribution on the profit of taxpayers mentioned in paragraph 1 of article 22 of Law 8,212 of July 24, 1991, which, in the fiscal years of 1994 and 1995 shall be of 30 percent, the other stipulations of Law 7,869 of December 15, 1988 remaining unchanged;

IV - twenty percent of the proceeds from the collection of all taxes and contributions to the Union, except those provided by items I, II and III

V - the part of the proceeds from the collection of the contribution mentioned in Supplementary Law 7, of September 7, 1970, owed by the juridical entities referred to in item III of this article, which. will be calculated, in the fiscal! years of 1994 and 195, through the employment of a rate of seventy five hundredths of one percent on the gross operating income, as defined in the legislation of income tax and

earnings of any nature;

.....  
Paragraph 1 - The rates and calculation base defined in items III and V shall be applied as from the first day of the month following the ninetieth day after the promulgation of this amendment.

Paragraph 2 - The parts referred to in items I, II, III and V shall be previously deducted from the calculation base of any legal or constitutional designation or participation, and the provisions of articles 158, II, 159, 212 and 239 of the Constitution shall not apply to them.

Paragraph 3 - The part referred to in item IV shall be previously deducted from the calculation base of any constitutional or legal designation or participation stipulated by articles 153, paragraph 5, I 57, II, 158, II, 212 and 239 of the Constitution.

Paragraph 4 - The provision of the former paragraph shall not apply to the resources provided by article 159 of the Constitution Paragraph 5 - The part of the resources originating from the tax on rural property and from the tax on income and earnings of any nature, designated for the Emergency Social Fund, as provided by item II of this article, shall not exceed:

I - in the case of the tax on rural property, eighty-six and two-tenths of one percent of the total proceeds from its collection;

II - in the case of the tax on income and earnings of any nature, five and six-tenths of one percent of the total proceeds from its collection.'

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### **CONSTITUTIONAL AMENDMENT No. 11, 1996**

*Allows the hiring of foreign professors, technicians and scientists by the Brazilian universities and grants autonomy to the scientific and technological research institutions.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Two paragraphs are added to article 207 of the Federal Constitution with the following wording:

**"Article 207.....**

Paragraph 1 - The universities are permitted to hire foreign professors, technicians and scientists as provided by law.

Paragraph 2 - The provisions of this article apply to scientific and technological research institutions."

**Article 2.** This Amendment shall come into force on the date of its publication.

Brasília, April 30, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir*

Soares, First Secretary - *Renan Calheiros*, Second Secretary - *Levy Dias*, Third Secretary - *Ernandes Amorim*, Fourth Secretary.

*Official Journal*, May 2, 1996.

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### **CONSTITUTIONAL AMENDMENT No. 12, 1996**

*Grants competency to the Union to establish provisional contribution on the movement or transmission of monies and of credits and rights of financial nature.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Sole Article.** Article 74 is included in the Temporary Constitutional Provisions Act, with the following wording:

**"Article 74.** The Union may establish provisional contribution on the movement or transmission of monies and of credits and rights of financial nature.

Paragraph 1 - The rate of the contribution mentioned in this article shall not exceed twenty-five hundredths of one percent, and the Executive Power may reduce it or reestablish it, in whole or in part, in the conditions and limits provided for by law.

Paragraph 2 - The provisions of articles 153, paragraph 5, and 154, I, of the Constitution shall not apply to the contribution mentioned in this article.

Paragraph 3 - The whole of the proceeds from the collection of the contribution mentioned in this article shall be allocated to the National Health Foundation for the financing of health actions and services.

Paragraph 4 - The liability for the contribution mentioned in this article shall be governed by the provisions of article 195, paragraph 6, of the Constitution, and it shall not be collected for longer than two years."

Brasília, August 15, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Ernandes Amorim*, Third Secretary - *Eduardo Suplicy*, Substitute Secretary.

*Official Journal*. August 16, 1996.

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### **CONSTITUTIONAL AMENDMENT No. 13, 1996**

*Gives new wording to item 11 of article 192 of the Federal Constitution.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Sole Article.** Item II of article 192 of the Federal Constitution shall be in force with the following wording:

**"Article 192.....**

II - authorization and operation of insurance, reinsurance, so security and capitalization companies, as well as of supervising agency;"

Brasília, August 21, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Ernandes Amorim*, Third Secretary - *Eduardo Suplicy*, Substitute Secretary.

*Official Journal*, August 22, 1996.

#### ORIGINAL WORDING

##### **Article 192:**

"II - authorization and operation of insurance, social security and capitalization companies, as well as the official supervising agency and of the official reinsurance agency;"

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#### CONSTITUTIONAL AMENDMENT No. 14, 1996

*Alters articles 34, 208, 211 and 212 of the Federal Constitution and gives new wording to article 60 of the Temporary Constitutional Provisions Act.*

The Directing Boards of the Chamber of Deputies and of the Federal Senate, under the terms of paragraph 3 of article 60, of the Federal Constitution. promulgate the following Amendment to the constitutional text:

**Article 1.** Subitem e is added to item VII of article 34 of the Federal Constitution, with the following wording:

"e) the application of the mandatory minimum of income resulting from state taxes, including those originating from transfers, to the maintenance and development of education."

**Article 2.** New wording is given to items I and II of article 208 of the Federal Constitution, as follows:

"I - mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at the proper age;

II - progressive universalization of the free high high-school education;"

**Article 3.** New wording is given to paragraphs I and 2 of article 211 of the Federal Constitution, and two additional paragraphs are inserted in this article, to read as follows:

**"Article 211.....**

Paragraph 1 - The Union shall organize the federal education system and that of the Territories, shall finance the federal public educational institutions and shall have, in educational matters, a redistributive and supplementary function, so as to guarantee the equalization of the educational opportunities and a minimum standard of quality of education, through technical and financial assistance to the States, the Federal District and the Municipalities.

Paragraph 2 - The Municipalities shall act on a priority basis in elementary education and in the education of children.

Paragraph 3 - The States and the Federal District shall act on a priority basis in elementary and secondary education.

Paragraph 4 - In the organization of their educational systems, the States and Municipalities shall establish forms of cooperation, so as to guarantee the universalization of the mandatory education."

**Article 4.** New wording is given to paragraph 5 of article 212 of the Federal Constitution, as follows:

"Paragraph 5 - The public elementary education shall have, as an additional source of financing, the social contribution for education. collected from companies as provided by law."

**Article 5.** Article 60 of the Temporary Constitutional Provisions Act is hereby altered and new paragraphs are inserted into it, with the article having the following wording:

**"Article 60.** In the first ten years after the promulgation of this Amendment, the States, the Federal District and the Municipalities shall allocate no less than 60% of the funds referred to in the caption of article 212 of the Federal Constitution, to the maintenance and development of elementary education, aiming at the assurance of the universalization of the service and the payment of appropriate salaries to the teachers.

Paragraph I - The distribution of responsibilities and resources between the States and their Municipalities, to be effected with part of the resources defined in this article, as set forth in article 211 of the Federal Constitution, is assured through the establishment, within each State and the Federal District, of a Fund for the Maintenance and Development of the Elementary Education and for the Increase of the Worth of the Teaching Profession, of a financial nature.

Paragraph 2 - The Fund referred to in the preceding paragraph shall be made up by, at least, fifteen percent of the resources referred to in articles 155, item II : I S8 item IV. and 159, item I, subitems a and b; and item 11, of the Federal Constitution, and shall be distributed among each State and its Municipalities, in proportion to the number of students in the respective elementary education networks.

Paragraph 3 - The Union shall supplement the resources of the Funds referred to in paragraph 1, whenever in each State and in the Federal District its value per student does not reach the nationally set minimum.

Paragraph 4 - The Union, the States, the Federal District and the Municipalities shall effect, during a period of five years, progressive adjustments of their contributions to the Fund, so as to guarantee a value per student corresponding to a minimum quality standard of education, defined at the national level. Paragraph 5

- A share of not less than 60% of the resources of each Fund referred to in paragraph 1 shall be used for the payment of elementary education teachers actually teaching.

Paragraph 6 - The Union shall apply never less than 30 percent of the resources

referred to in the caption of article 212 of the Federal Constitution to the eradication of illiteracy and to the maintenance and development of the elementary education, including the supplementation referred to in paragraph 3.

Paragraph 7 - The law shall provide for the organization of the Funds, the proportional distribution of its resources, its oversight and control, as well as for the way to calculate the national minimum value per student."

**Article 6.** This Amendment shall come into force on January 1 of the year subsequent to that of its promulgation.

Brasília, September 12, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Ernandes Amorim*, Third Secretary - *Eduardo Suplicy*, Substitute Secretary.

*Official Journal*, September 13, 1996.

#### ORIGINAL WORDING

##### **Article 208:**

"I - compulsory and free elementary education, including for those who did not have access to school at the proper age; II - progressive extension of compulsory and free education secondary school;"

##### **Article 211:**

"Paragraph 1 - The Union shall organize and finance the federal educational system and that of the territories and shall provide technical and financial assistance to the states, the Federal District and the municipalities for the development of their educational systems, and for the compliance with the priority to be given to compulsory education.

Paragraph 2 - The municipalities shall act on a priority basis in elementary and pre-school education."

##### **Article 212:**

"Paragraph 5 - The public elementary education shall have, as an additional source of financing, the social contribution for education, collected, as provided by law, from companies, which may deduct from it the funds invested in the fundamental education of their employees and dependents."

##### **Article 60:**

"**Article 60.** In the first ten years after the promulgation of the Constitution, the Government shall endeavour, with the mobilization of all organized sectors of society and with the application of at least fifty percent of the funds referred to in article 212 of the Constitution, to eradicate illiteracy and generalize elementary education.

Sole paragraph - Within a like period of time, the public universities shall

decentralize their activities with the purpose of extending their higher education to cities of greater population density."

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### **CONSTITUTIONAL AMENDMENT 15, 1996**

*Gives new wording to paragraph 4 of article 18 of the Federal Constitution.*

The Directing Boards of the Chamber of Deputies and of the Senate, under the terms of paragraph 3 of article 60 of the Federal Constitution promulgate the following Amendment to the constitutional text:

**Sole Article.** Paragraph 4 of article 18 of the Federal Constitution shall henceforth be in force with the following wording:

**"Article 18.....**

Paragraph 4 - The establishment, merger, fusion and dismemberment of municipalities shall be effected through state law, within the period set forth by supplementary federal law, and shall depend on prior consultation. by means of a plebiscite, of the population of the municipalities concerned, after the publication of Municipal Feasibility Studies, presented and published as set forth by law."

Brasília, September 12, 1996.

THE DIRECTING BOARD OF THE CHAMBER OF DEPUTIES: *Luís Eduardo*, President - *Ronaldo Perim*, First Vice-President - *Beto Mansur*, Second Vice-President - *Wilson Campos*, First Secretary - *Leopoldo Bessone*, Second Secretary - *Benedito Domingos*, Third Secretary - *João Henrique*, Fourth Secretary.

THE DIRECTING BOARD OF THE FEDERAL SENATE: *José Sarney*, President - *Teotônio Vilela Filho*, First Vice-President - *Júlio Campos*, Second Vice-President - *Odacir Soares*, First Secretary - *Renan Calheiros*, Second Secretary - *Ernandes Amorim*, Third Secretary - *Eduardo Suplicy*, Substitute Secretary.

*Official Journal*, September 13, 1996.

### **ORIGINAL WORDING**

#### **Article 18:**

"Paragraph 4 - The establishment, merger, fusion and dismemberment of municipalities shall preserve the continuity and the historic-cultural unity of the urban environment, shall be carried out by a state law, with due regard for the requisites set forth in a state supplementary law and shall depend on prior consultation, by means of a plebiscite, of the population directly concerned."

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### **REVISION CONSTITUTIONAL AMENDMENTS**

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#### **REVISION CONSTITUTIONAL AMENDMENT No. 1, 1994**

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** Articles 71, 72 and 73, with the following wording, are hereby added to the Temporary Constitutional Provisions Act:

**"Article 71.** The Emergency Social Fund is hereby instituted for the fiscal years of 1994 and 1995, aiming at the financial recuperation of the Federal Public Finances and the economic stabilization, the resources of which shall be applied to the actions of the health and education systems, the welfare benefits and welfare assistance of permanent nature, including the payment of welfare debts, as well as other programs of great social and economic interest.

Sole paragraph. The provision of the final part of item II of paragraph 9 of article 165 of the Constitution shall not apply, in the 1994 fiscal year, to the the Fund established by this article.

**Article 72.** The Emergency Social Fund is comprised of:

I - the proceeds from the collection of the tax on income and earnings of any nature to be levied at source on payments of any nature effected by the Union, including its autonomous government agencies and foundations;

II - the part of the proceeds from the collection of the tax on urban buildings and urban land property, of the tax on income and earnings of any nature, and of the tax on credit, foreign exchange and insurance transactions, or transactions relating to bonds and securities, resulting from the changes generated by Provisional Measure 419 and from Laws 8,847, 8,849 and 8,468, all dated January 28, 1994, the period in force of the latter being extended to December 31, 1995;

III - the part of the proceeds from the collection due to the increase of the rate of welfare contribution on the profit of taxpayers mentioned in paragraph 1 of article 22 of Law 8.212 of July 24, 1991, which, in the fiscal years of 1994 and 1995 shall be of 30 percent, the other stipulations of Law 7,869 of December 15, 1988 remaining unchanged;

IV - twenty percent of the proceeds from the collection of all taxes and contributions to the Union, except those provided by items I, II and III;

V - the part of the proceeds from the collection of the contribution mentioned in Supplementary Law 7, of September 7, 1970, owed by the juridical entities referred to in item III of this article which will be calculated, in the fiscal years of 1994 and 1995, through the employment of a rate of seventy five hundredths of one percent on the gross operating income, as defined in the legislation of income tax and earnings of any nature;

VI - other incomes defined in specific legislation.

Paragraph 1 - The rates and calculation base defined in items III and V shall be applied as from the first day of the month following the ninetieth day after the promulgation of this amendment.

Paragraph 2 - The parts referred to in items I, II, III and V shall be previously deducted of the calculation base of any legal or constitutional designation or participation, and the provisions of articles 158, II, 159, 212 and 239 of the Constitution shall not apply to them.

Paragraph 3 - The part referred to in item IV shall be previously deducted from the calculation base of any constitutional or legal designation or participation stipulated by articles 153, paragraph 5, 157, II, 158, IT, 212 and 239 of the Constitution.

Paragraph 4 - The provision of the former paragraph shall not apply to the resources provided by article 159 of the Constitution.

Paragraph 5 - The part of the resources originating from the tax on rural property and from the tax on income and earnings of any nature, designated for the Emergency Social Fund, as provided by item II of this article, shall not exceed:

I - in the case of the tax on rural property, eighty six and two- tenths of one percent of the total proceeds from its collection;

II - in the case of the tax on income and earnings of any nature, five and six-tenths of one percent of the total proceeds from its collection

**Article 73.** In the regulation of the Emergency Social Fund, the instrument provided by item V of article 59 of the Constitution may not be applied."

**Article 2.** Paragraph 4 of article 2 of the Constitutional Amendment No. 3 of 1993 is hereby revoked.

**Article 3.** This amendment shall come into force on the date of its publication.

Brasília, March 1, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary -*Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, March 2, 1994.

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## REVISION CONSTITUTIONAL AMENDMENT No. 2, 1994

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** The expression "or any chief officers of agencies directly subordinate to the Presidency of the Republic" is added to the text of article 50 of the Constitution, which shall henceforth be in force with the following wording:

"**Article 50.** The Chamber of Deputies and the Federal Senate, or any of their committees, may summon a Minister of State or army chief officers of agencies directly subordinate to the Presidency of the Republic to personally render information on a previously determined matter, and this absence without adequate justification shall constitute a crime of malversation."

**Article 2.** The expression "or any of the persons mentioned in the caption of this article" is added to paragraph 2 of article 50, which shall henceforth be in force with the following wording:

"**Article 50**..... Paragraph 2 - The Directing Boards of the Chamber of Deputies and of the Federal Senate may forward to the Ministers of State, or any of the persons mentioned in the caption of this article, written requests for information, and refusal or non-compliance, within a

period of thirty days, as well as the rendering of false information, shall constitute a crime of malversation."

**Article 3.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, June 7, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary - *Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, June 9, 1994.

### ORIGINAL WORDING

#### Article 50.

"**Article 50.** The Chamber of Deputies or the Federal Senate, as well as any of their committees may summon a Minister of State to personally render information on a previously determined matter, and this absence without adequate justification shall constitute a crime of malversation.

Paragraph 2 - The Directing Board of the Chamber of Deputies and of the Federal Senate may forward to the Ministers of State written requests for information, and refusal or non-compliance, within a period of thirty days, as well as the rendering of false information, shall constitute a crime of malversation."

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### REVISION CONSTITUTIONAL AMENDMENT No. 3, 1994

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** Letter c of item I, letter b of item II, paragraph 1 and item II of paragraph 4 of article 12 of the Federal Constitution shall henceforth be in force with the following wording:

"Article 12.....

I-.....

a) .....

b) .....

c) Those born abroad, of a Brazilian father or a Brazilian mother, provided that they come to reside in the Federative Republic of Brazil and opt for the Brazilian nationality at any time;

II - .....

a) .....

b) foreigners of any nationality, resident in the Federative Republic of Brazil for over fifteen uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality.

Paragraph I - The rights inherent to Brazilians shall be attributed to Portuguese

citizens with permanent residence in Brazil, if there is reciprocity in favour of Brazilians, except in the cases stated in the Constitution.

Paragraph 2 - .....

Paragraph 3 - .....

Paragraph 4 - .....

I-.....

II - acquires another nationality, save in the cases:

a) of recognition of the original nationality by the foreign law;

b) of imposition of naturalization, under the foreign rules, to the Brazilian resident in a foreign State, as a condition for permanence in its territory, or for the exercise of civil rights."

**Article 2.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, June 7, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary - *Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, June 9, 1994.

## ORIGINAL WORDING

### Article 12:

"I - .....

c) those born abroad, of a Brazilian father or a Brazilian mother, provided that they are registered with a competent Brazilian authority, or come to reside in Brazil before reaching majority and, having reached majority, opt for the Brazilian nationality at any time;

II - .....

b) foreigners of any nationality, resident in the Federative Republic of Brazil for over thirty uninterrupted years and without criminal conviction, provided that they apply for the Brazilian nationality.

Paragraph 1. The rights inherent to born Brazilians shall be attributed to Portuguese citizens with permanent residence in Brazil, if there is reciprocity in favour of Brazilians, except in the cases stated in this Constitution.

Paragraph 4..... II - acquires another nationality by voluntary naturalization."

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## REVISION CONSTITUTIONAL AMENDMENT No. 4, 1994

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** The expressions: "administrative probity, morality for the exercise of the office, the previous life of the candidate being considered, and", are added to paragraph 9 of

article 14 of the Constitution, after the expression "in order to protect", the provision being henceforth in force with the following wording:

**"Article 14....."**

Paragraph 9 - In order to protect the administrative probity, morality for the exercise of the office, the previous life of the candidate being considered and the normality and legitimacy of the elections against the influence of the economic power or of the abuse in the holding of office, position or job in the direct or indirect public administration, a supplementary law shall establish other cases of ineligibility and the periods for such ineligibilities to cease."

**Article 2.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, June 7, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary - *Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, June 9, 1994.

## ORIGINAL WORDING

### Article 14:

"Paragraph 9 - In order to protect the normality and legitimacy of the elections against the influence of the economic power or of the abuse in the holding of office position or job in the direct or indirect public administration. a supplementary law shall establish other cases of ineligibility and the periods for such ineligibilities to cease."

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## REVISION CONSTITUTIONAL AMENDMENT No. 5, 1994

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** In article 82, the expression "five years" is replaced by "four years."

**Article 2.** This Constitutional Amendment shall come into force on January 1, 1995.

Brasília, June 7, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary - *Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, June 9, 1994.

## ORIGINAL WORDING

### Article 82:

"**Article 82.** The term of office of the President of the Republic is of five years, the re-election for the subsequent term being forbidden. and the term of office shall commence on January 1 of the year following the year of his election."

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### REVISION CONSTITUTIONAL AMENDMENT No. 6, 1994

The Directing Board of the National Congress, under the terms of article 60 of the Federal Constitution, combined with article 3 of the Temporary Constitutional Provisions Act, promulgates the following constitutional amendment:

**Article 1.** Paragraph 4 is added to article 55, with the following wording:

**Article 55.**.....

Paragraph 4 - The resignation of a Congressman submitted to a legal suit that aims at or may lead to loss of mandate, under the provisions of this article, will have its effects suspended until the final deliberations mentioned in paragraphs 2 and 3."

**Article 2.** This Constitutional Amendment shall come into force on the date of its publication.

Brasília, June 7, 1994.

THE DIRECTING BOARD OF THE NATIONAL CONGRESS: *Humberto Lucena*, President - *Adylson Motta*, First Vice-President - *Levy Dias* - Second Vice-President *Wilson Campos*, First Secretary - *Nabor Júnior*, Second Secretary - *Aécio Neves*, Third Secretary - *Nelson Wedekin*, Fourth Secretary.

*Official Journal*, June 9, 1994.

**Fuente:** Base de datos Políticos de las Américas.

<http://www.georgetown.edu/pdba/Constitutions/Brazil/english98.html>